

CM 334178

1942 SABOTEURS CASE TRIED BY APPOINTED MILITARY COMMISSION

VOL. I OF XVIII

TRANSCRIPT

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS
Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR.

Washington, D. C.

Wednesday, July 8, 1942.

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334178

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MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
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Washington, D. C.

Wednesday, July 8, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Justice, at 10 o'clock a. m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of
the United States.
Major General Myron Cramer, The Judge Advocate
General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch.
Officers of the Judge Advocate General's
Department.

Oscar Cox, Assistant Solicitor General of the
United States.
James H. Rowe, Jr.,
Assistant to the Attorney General.

As Provost Marshal:
Brigadier General Albert L. Cox.

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As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lauson H. Stone,
Captain William G. Hummell.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

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PROCEEDINGS

The President. The Commission will come to order.

The Commission is now open for the trial of such persons as may be brought before it.

Brigadier General Cox. Bring in the prisoners.

(The prisoners were brought into the room.)

Colonel Munson. May it please the Commission: the prosecution is ready to proceed with the trial in the case of the United States against Ernest Peter Burger, George John Dasch, Herbert Hans Haupt, Henry Harm Heinck, Edward John Kerling, Hermann Otto Neubauer, Richard Quirin, and Werner Thiel.

The reporter will be sworn.

(The oath was administered to the reporter,

Mr. Francis J. Attig, as follows:)

Colonel Munson. Do you swear that you will faithfully perform the duties of a reporter to this Commission, so help you God?

Mr. Attig. I do.

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Colonel Munson. I am directed by the Trial Judge Advocates to name the following men to this honorable Commission. The Trial Judge Advocates nominate and request your honorable body to accept as assistant trial judge advocates the following named officers of the Department of Justice; Oscar Cox, Assistant Solicitor General of the United States, and James H. Rowe, Jr., Assistant to the Attorney General.

Will those gentlemen rise, please, so that they may be identified?

(Mr. Cox and Mr. Rowe rose.)

Colonel Munson. And also the following named officers of the United States Army: Colonel F. Granville Munson, now addressing the Commission; Colonel John M. Weir, and Colonel Erwin M. Treusch; all being officers of the Judge Advocate General's Department of the Army.

Will they be accepted as assistant trial judge advocates?

The President. They will be accepted.

Colonel Royall. May it please the Commission: Before the defense counsel take any part or are recognized in this matter, we desire to make a statement to the Commission.

The President. Is that in order, as far as the prosecution is concerned?

Colonel Munson. Yes.

The President. It will be received.

Colonel Royall. In deference to the Commission and in order that we may not waive for our clients any rights which may belong to them, we desire to state that, in our opinion, the order of the President of the United States creating this Court is invalid and unconstitutional. I do not think it

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necessary or appropriate to argue that question unless I am so requested.

It is perhaps sufficient to state that our view is based, first, on the fact that the civil courts are open in the territory in which we are now located and that, in our opinion, there are civil statutes governing the matters to be investigated.

In the second place, we question the jurisdiction of any court except a civil court over the persons of these defendants.

In the third place, we think that the order itself violates in several specific particulars congressional enactments as reflected in the Articles of War.

The President. Are there any remarks on the part of the prosecution?

The Attorney General. I do not want to argue the case, but if at the appropriate time you wish to hear argument on it, I should like to be heard. May I simply make a very brief statement in answer to Colonel Royall's remarks?

In the first place, I cannot conceive that a military commission composed of high officers of the Army, under a commission signed by the Commander-in-Chief, would listen to argument on the question of its power under that authority to try these defendants.

In the second place, let me say that the question of law involved is a question, of course, to be determined by the civil courts should it be presented to the civil courts.

Thirdly, this is not a trial of offenses of law of the civil courts but is a trial of the offense of the law of war, which is not cognizable to the civil courts. It is the trial,

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as alleged in the charges, of certain enemies who crossed our borders, crossed our boundaries, which had then been described by the military and naval authorities, and who crossed in disguise in enemy vessels and landed here.

They are exactly and precisely in the same position as armed forces invading this country. I cannot think it conceivable that any commission would listen to an argument that armed forces entering this country should not be met by the resistance of the Army itself under the Commander-in-Chief or that they have any civil rights that you can listen to in this proceeding.

Colonel Royall. May I say in reply, sir, that the military rank of the Commission or the President of the United States does not, in our opinion, affect the matter in any way, and it is needless to say to this Court that we are basing our position in no sense upon the personnel of the Court or any lack of confidence that we have in it.

Colonel Ristine. If the Commission please, on behalf of the one prisoner--

The President. I take it you are Colonel Ristine?

Colonel Ristine. Yes, sir.

The President. Representing the one prisoner by name?

Colonel Ristine. Representing the one. May I request that the objections urged by defense counsel be equally applicable to that prisoner, George John Dasch?

The President. Colonel Ristine, Mr. Reporter, has been directed by competent authority to represent that particular prisoner, and the Commission has been so informed by such authority.

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Colonel Dowell. Another comment by defense counsel, if the Commission please: The purpose of these remarks at this time is merely to ward off any assumption that the defense accepts by participating in this proceeding the legality of the tribunal or of its method of constitution.

The President. Does the prosecution care to remark on these statements of the defense counsel?

The Judge Advocate General. No, sir.

The President. It is the opinion of the Court that before any decision in the order of instance be passed on by the Commission, the Commission shall be sworn and organized. I might state in this connection that the Commission will hold its proceedings in secret; that those present will be limited to the proper officials of the prosecution and of the defense; and that they will all be sworn, as well as such officials as may be present on the request of the prosecution and the defense, subject to the decision of the Court as to the propriety of their entrance; and that there will be no spectators of any character or kind admitted to the sessions of this Court or Commission.

Since the procedure as to order of instance will be that followed in military courts in general, we shall now proceed to the swearing of the Court and those present before taking action on your request.

Colonel Munson. May it please the Commission: The defense counsel requests me to ask your honorable body to accept as assistant defense counsel the following named officers of the Army of the United States: Major Lauson H. Stone.

(Major Stone rose.)

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Colonel Munson. Captain William G. Hummell.

(Captain Hummell rose.)

Colonel Munson. With respect to those present, do I understand the order of the Commission to cover the officers of the Federal Bureau of Investigation, who are necessary in the conduct of the case, and such assistants as the Attorney General may desire to aid him in the prosecution of the case, without naming those officers specifically?

The President. That is correct.

Colonel Munson. That is correct, sir.

The President. I shall ask you to name them to the officer at the door. I shall ask you to present to Lieutenant Page, representing the Provost Marshal, at the door, a list of those authorized, so that they may be passed in and out properly and expeditiously.

Colonel Munson. Two copies of the record will be furnished the defense under the terms of the order.

I shall now read the order appointing this military commission.

ORDER APPOINTING MILITARY COMMISSION

"Commander-in-Chief of the Army and Navy

"Washington, D. C. July 2, 1942.

"By virtue of the authority vested in me as President and as Commander-in-Chief of the Army and Navy, under the Constitution and Statutes of the United States, and more particularly the Thirty-Eighth Article of War (U.S.C. Title 10, Sec. 1509)"--

The latter, I may interpolate, standing for United States Code, Title 10, Section 1509--

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"I, Franklin Delano Roosevelt, do hereby appoint
as a Military Commission the following persons:

"Major General Frank R. McCoy, President

Major General Walter S. Grant

Major General Blanton Winship

Major General Lorenzo D. Gasser,

Brigadier General Guy V. Henry

Brigadier General John T. Lewis

Brigadier General John T. Kennedy

"The prosecution shall be conducted by the
Attorney General and the Judge Advocate General.

The defense counsel shall be Colonel Cassius M.
Dowell and Colonel Kenneth Royall.

"The Military Commission shall meet in Washington,
D. C., on July 8th, 1942, or as soon thereafter as it
practicable, to try for offenses against the Law of
War and the Articles of War, the following persons:

"Ernest Peter Burger

George John Dasch

Herbert Hans Haupt

Henry Harm Heinck

Edward John Kerling

Hermann Otto Neubauer

Richard Quirin

Werner Thiel

"The Commission shall have power to and shall,
as occasion requires, make such rules for the conduct
of the proceedings, consistent with the powers of
Military Commissions under the Articles of War, as it
shall deem necessary for a full and fair trial of the

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matters before it. Such evidence shall be admitted as would, in the opinion of the President of the Commission, have probative value to a reasonable man. The concurrence of at least two-thirds of the Members of the Commission present shall be necessary for a conviction or sentence. The record of the trial including any judgment or sentence shall be transmitted directly to me for my action thereon.

"FRANKLIN D. ROOSEVELT

"The White House,
"July 2, 1942.

All the members of the Commission named therein are present, to wit: Major General McCoy, Major General Grant, Major General Winship, Major General Gasser, Brigadier General Henry, Brigadier General Lewis, and Brigadier General Kennedy.

The accuser in this case is Colonel F. Granville Munson, United States Army. The charges were forwarded to the Trial Judge Advocates of this Commission by letter of The Adjutant General, dated July 6, 1942, pursuant to the order of the Secretary of War, which will be read later.

No member of this Commission is to be called as a witness for the prosecution, and no cause for or ground of challenge of any member of this Commission is known to the prosecution.

Is any member of this Commission aware of any facts which he believes to be a ground for challenge by either side? If so, please state those facts.

Cin.
fls.
10:20

Cinci
fia
Attig
10:20
a.m.

The President. There seem to be none.

Colonel Munson. The prosecution has no challenges.

The President. Lieutenant Page, please permit nobody to leave the court or to enter until further instructions. I will make an exception for any who have heretofore been sworn.

For the moment I will ask you to carry out my previous instructions--that nobody will be allowed to leave or enter until further instructions.

(The oath was administered to the reporter, Mr. N. J. Cinciotta, as follows:)

Colonel Munson. Do you swear that you will faithfully perform the duties of a reporter to this Commission, so help you God?

Mr. Cinciotta. I do.

Colonel Munson. Do the accused or their counsel desire to challenge any member of this Commission for cause?

Colonel Royall. May it please the Commission, on account of the unusual nature of the proceeding, and because of the short time that we have had to investigate this matter, if the Commission will permit us, with all deference, of course, to the individual members of the Commission, we would like to ask the Commission as a body a few questions to determine whether or not we will challenge anyone, if that is permissible.

The President. I would like to ask the Judge Advocate General of the Army whether he thinks the proceedings would more properly, on this plea, follow the organization of the Commission with regard to swearing the Commission and counsel and those present.

The Judge Advocate General. I do not believe, sir, that

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I understand just what you mean. Do you mean to swear the Commission first?

The President. That was the question I was asking, whether we should be sworn and organized prior to acting on these objections and pleas.

The Judge Advocate General. No, you should not, sir.

The President. In other words, we should act without further organization of the Commission?

The Judge Advocate General. Yes, sir.

The President. Has the defense any comment on that?

Colonel Royall. Our view of it would be this, sir; that on the question of challenge that should be disposed of before the Commission is organized. I think that is the normal and proper procedure. As to any other matters, I should think the Commission would have to be organized and sworn.

The President. It seems to me, then, that the Commission should act on your challenge. I take it there is a challenge to the jurisdiction.

Colonel Royall. There is a challenge to the jurisdiction. If the Commission desires my opinion, I think that any action taken by the Commission as a Commission would have to be taken after you are sworn. But the question of challenge, if I understand the Court Martial Manual, is normally disposed of before the Commission is sworn.

I think that is correct, is it not?

Colonel Munson. That is correct. That is provided for in the 57th paragraph of the present Manual for Courts Martial. Does the Commission desire me to read it?

The President. The Commission is familiar with that. I

just wanted the comment of the Judge Advocate General.

Colonel Royall. I am not making any motion at this time directed to the Commission. My request is that I be permitted to make certain inquiries of the Commission to determine whether or not we think there should be a challenge for cause. That is the request I make.

The President. In other words, this is related to your first challenge?

Colonel Royall. The challenge for cause, not peremptory. We will come to that later. We have not been advised yet what is to be done about that. But as to the challenge for cause, I desire to ask the Commission some general questions, and if these general questions develop any situation peculiar to an individual member of the Commission, I desire to pursue that by further inquiry of the Commission, if that is appropriate.

The President. We will consider that.

Has the prosecution any further remarks on the questions posed by the defense?

The Judge Advocate General. The procedure is a little unusual. The challenging side customarily presents the ground of its challenge, and then the challenged member of the Commission or the Court, in the ordinary court martial, states his position or familiarity with the case. However, under the circumstances of this case, I see no serious objection to the procedure requested.

2 The President. The Commission will grant your motion.

Colonel Royall. I would like to say that, in view of the great newspaper publicity that has been given to this matter, in spite of efforts to suppress it, I wish to inquire whether

any member of the Commission has to any degree the feeling that the circumstances under which the Commission is appointed would make it difficult or embarrassing for him to reach a judgment in favor of the defendants in the event the evidence should so indicate.

I hear no answer, and I assume there is no such--

The President. Well, we are just considering the question.

Colonel Royall. I see, sir.

The President. I will give you the answer.

Colonel Royall. Yes, I see.

The President. There seems to be unanimity of opinion in the answer "No" to your question.

Colonel Royall. Giving weight, of course, to the fact that there are certain elements of the offenses charged which differ in times of peace and times of war, an element to which the Commission can properly give consideration, I ask the members of the Commission if, aside from those legal considerations, the fact that this trial is being conducted in time of war would in any manner incline the Commission to deal more harshly with the defendants in the matter of conviction or sentence than they would if it were in time of peace.

The President. I do not consider it a proper question. The Commission does not consider that a proper question to consider.

Colonel Royall. We have no other questions to ask.

The defense has no challenges for cause.

Colonel Munson. Is any challenge, may I ask the Commission, peremptorily to be allowed?

The President. The question has not been decided, as I

take it, on the motion before the Commission of a challenge to the general jurisdiction of the Commission. That has not been decided yet.

Colonel Dowell. May it please the Commission: The defense has presented nothing further, in that connection, than merely to go on record as not admitting the constitutionality or the validity of this Commission or the method of its appointment by proceeding to participate in the trial. No motion has been intended to be made at this time whatever.

The President. There seems to be nothing for the Commission to pass on, then, beyond the making of record the statements of the opposing sides. So I will instruct the procedure of the organization of the Commission to go ahead.

Colonel Munson. Is any challenge of a peremptory nature to be permitted?

The President. We will not act on that unless there is some challenge before the Commission.

Colonel Dowell. The defense would like to exercise its right to one peremptory challenge.

Colonel Munson. The prosecution, I think, questions the right of the defense to phrase the statement in that manner-- that it has a right to one peremptory challenge.

The President. The Commission will hear the discussion on that, if any is desirable, by the Attorney General.

The Attorney General. It is a matter of right, of course, for you to decide on, and under the powers given you by the President, it is perfectly clear that you can refuse any peremptory challenges. That is our view as a matter of law of

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your powers under the Commission.

The President. Is there any comment from the defense?

Colonel Dowell. If it please the Court, I wish to call your attention first to Article of War 18, pertaining to challenges, which reads as follows:

"Members of a general or special court martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy or validity thereof and shall not receive a challenge of more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to one peremptory challenge; but the law member of the court shall not be challenged except for cause."

It will be noted that that Article of War 18 which I have just read relates only to general courts martial. Article of War 38 reads:

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"President may prescribe rules. The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, insofar as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: Provided,"

and this is a proviso on which the defense bases its right:

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"That nothing contrary to or inconsistent with these articles shall be so prescribed."

Continuing with the further proviso:

"Provided further, That all rules made in pursuance of this article shall be laid before the Congress annually."

It is the understanding of the defense that a rule of procedure has been prescribed denying the defense, or denying anyone on either side, the right of peremptory challenge.

I shall ask, for the information of the defense, whether that rule has been approved by the President of the United States. The article prescribes that the President shall prescribe rules.

The Judge Advocate General. While the prosecution does not believe and agree with the defense that, as a matter of right, it has the right to a peremptory challenge, it has no objection as a matter of procedure.

Colonel Dowell. Then, based upon the first proviso to Article of War 38 in its relation to Article of War 18, that proviso being, "That nothing contrary to or inconsistent with these articles shall be so prescribed," which may be prescribed as a rule of procedure, the defense requests the right to exercise one peremptory challenge.

The President. Is there any further comment?

The Judge Advocate General. I do not think so.

The President. Does the Commission care to be informed in any way further on the point at issue?

The Commission will be closed.

(The Commission was closed. When reopened the following occurred:)

Wilfong
fls
10:35am

Colonel Munson. There is at this time another reporter present at the table, and I will ask that he and Mr. Harkins be sworn at the same time.

(The following oath was administered to J. Chester Wilfong and Lloyd L. Harkins, reporters:)

Colonel Munson. You solemnly swear that you will faithfully perform the duties of reporters to this Commission. So help you God.

Mr. Wilfong. I do.

Mr. Harkins. I do.

The President. The Commission will not entertain a peremptory challenge from either side.

Colonel Munson. I therefore assume that there is no challenge for cause?

Colonel Royall. That has already been announced.

Colonel Munson. Except such as has already been made?

Colonel Royall. We have made no challenge.

Colonel Munson. We are now ready to swear the Commission.

ADMINISTERING OF OATH TO COMMISSION

Colonel Munson. You, Major General McCoy, Major General Grant, Major General Winship, Major General Gasser, Brigadier General Henry, Brigadier General Lewis, and Brigadier General Kennedy, do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the persons to be tried, and that you will duly administer justice, without partiality, favor of affection, according to the provisions of the rules and articles for the government of the armies of the United States, so far as the same are applicable to trials before this Military Commission, under the provisions laid down for its guidance in the order of the President of July 2, 1942, creating the Commission; and if any doubt should arise not ex-

plained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the findings or sentence of the Military Commission until they shall be published by the proper authority or duly announced by the Commission, except to the Trial Judge Advocates and Assistant Trial Judge Advocates; neither will you disclose or discover the vote or opinion of any particular member of the Commission upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.

(Affirmative responses.)

The President. I will swear the Trial Judge Advocates and Assistant Trial Judge Advocates.

You, Francis Biddle, Attorney General of the United States, and Major General Myron Cramer, The Judge Advocate General of the Army, do separately swear that you will faithfully and impartially perform the duties of Trial Judge Advocates and that you will not divulge the findings or sentence of this Military Commission to any but the proper authority until they shall be duly disclosed. So help you God.

(Affirmative responses.)

The President. I think I will ask you to swear your assistants.

The Judge Advocate General. You, Oscar Cox, Assistant Solicitor General of the United States, James H. Rowe, Jr., Assistant to the Attorney General, Colonel F. Granville Munson, Colonel John M. Weir, and Colonel Erwin M. Treusch, all being officers of the Judge Advocate General's Department, swear that you will faithfully and impartially perform the duties of Assistant Trial Judge Advocates and will not divulge the findings or sentence of the Commission to any but the proper

authority until they shall be duly disclosed. So help you God.

(Affirmative responses.)

The President. I shall swear all those present as to general secrecy.

Colonel Munson. May it please the Commission, there are several typists connected with the reporters' force who are across the hall, and it might be well for them to be sworn at the same time.

The President. I think it will be well for anybody coming in or out of this room to be sworn at this time.

Colonel Royall. May I make an inquiry, sir? We do not know the substance of this oath, but from the standpoint of the defense counsel it is possible that some limited disclosure would have to be made if someone sought to assert the civil rights of these defendants; and we conceive it our duty not to take an oath that would prevent us from so doing.

The President. You may look at the form of the oath (handing Colonel Royall a document).

Colonel Royall. Thank you, sir.

We have two typists also who have not come in. There may be no necessity for their coming in at all.

It is our opinion, sir, that as far as defense counsel are concerned, it is considerably broader than the obligation taken by the Judge Advocates, and it may conceivably preclude us from what we conceive our duty to be. Therefore, we would respectfully request that the defense counsel be given an oath similar to that taken by the prosecution.

The President. I see no objection. This applies to the defense counsel only. I will ask that you let those to whom you wish to have administered this same form of oath stand

and raise their right hands.

(The President then administered the following oath:)

The President. Colonel Dowell, Colonel Royall, Colonel Ristine, Major Stone, and Captain Hummell, do you swear or affirm that you will faithfully and impartially perform the duties of defense counsel, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed: So help you God.

(Affirmative responses.)

The President. I will now administer the general oath to those present who have not already been sworn. You will all raise your hands, please, excepting the prisoners.

Do each of you here present solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority?

(Affirmative responses.)

The President. Lieutenant Page, will you see that you have a list of those that have already taken the oath, and should any others be admitted who have not taken the oath, you will bring it to the attention of the Commission, please.

The Commission makes this statement, that it considers that it has power to punish for contempt of court any breach of these oaths.

The Court will be seated and we will proceed.

Colonel Munson. If the Commission please, I shall now read the charges and specifications, the affidavit thereto, and the order of reference to this Commission for trial.

Before receiving pleas to the general issue I ask if there are any special pleas or motions to be made at this

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time.

Colonel Royall. There are some special pleas.

Colonel Munson. Before pleading to the general issue?

Colonel Royall. Yes.

Colonel Munson. Will you make them at this time, then?

Colonel Royall. If the Commission please, each of the defendants--I assume I can include yours in this?

Colonel Ristine. Yes.

Colonel Royall (Continuing). --pleads lack of jurisdiction over the persons of the defendants. We desire to state, first, that they are not included within the class of persons defined in Article of War 2, with which I am sure the Court is familiar, but which I will read if you so desire. They cannot, as we conceive it, be made subject to it by Presidential proclamation issued after the date of the alleged commission of an offense; and therefore the President's proclamation cannot enlarge what it would otherwise have been.

As to the charges based upon Articles of War 81 and 82, there is no allegation that these persons were found in any of the fortifications, posts, quarters, or encampments of any of the armies of the United States or in the vicinity thereof.

I may be wrong about that. I said it was not alleged. There may be an allegation sufficient to cover that. It will possibly arise later, and I will state it now as a plea, that they are not included as the class of persons defined in Articles 81 and 82.

We further desire to enter a plea to the jurisdiction of this court over the offenses charged, and I suppose it would be in order for me to present all my pleas to the

6w jurisdiction in one, without taking them up separately, unless the court decides otherwise.

The President. I would like defense counsel to take cognizance of the fact that this is not a court in the usually accepted term or as referred to in the Court Martial Manual. This is a Military Commission, and please use that term.

Colonel Royall. I will try to do so, sir.

The President. I know it is an easy habit for us all to speak of a court, but we have felt that we should emphasize the word "Commission."

Colonel Royall. I will make every effort to do that. From force of habit I may lapse every now and then into the use of the word "court", but I will try not to do so.

The second plea to the jurisdiction is that the court does not have jurisdiction of the subject matter of these charges. There is a difference between the charge of Spying and the other charges. One of our grounds is applicable to charges other than Spying, and I will address myself to that, briefly, first.

All the other charges are offenses of which the civil law can take cognizance. They are covered by specific statutes in the civil law, and the civil courts are open for their enforcement; and we therefore take the position that all the other charges should be dismissed.

Unless further argument calls for it, I am not going to elaborate by reading the civil statutes which cover all the other charges. I will do so if it is permitted by the Commission and the argument so requires.

The other ground of lack of jurisdiction over the subject

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matter arises out of facts which we have intimated in our first remarks; and that argument is applicable to all the charges. It is based on the fact that the order creating this Commission is violative of express Congressional enactment.

Article 38, which has been read to you by Colonel Dowell in connection with the right to challenge, specifically provides, as we construe it, that the rules of military commissions cannot violate any of the express rules for courts martial set out in the Articles of War. The rules for this Commission, we contend, violate the express provisions of the Articles of War in several particulars. We conceive that they violate the Articles of War in connection with Article 43, which specifically provides that a death sentence may be imposed only by unanimous vote.

They violate Article 70 which prescribes a method of preliminary investigation before charges can be tried. I do not know whether the order itself violates Article 17 in depriving these defendants of civil counsel before this Commission, but as applied the order has so deprived them.

The order also expressly violates Articles 46 and 50 $\frac{1}{2}$ construed together.

Article 46 prescribes that military commissions are subject to the method of review prescribed by Article 50 $\frac{1}{2}$. That is, it so provides if you read the two sections together; and this order prescribes a different method of review, fundamentally and radically different, from that prescribed by the Articles of War.

Finally, the order gives a delegation of power as to other rules or rules in general, which we do not think is

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consistent with many provisions of the Articles of War.

That is our position.

The Attorney General. May it please the Commission, it seems to me that it is a little bit difficult to argue these differences in vacuo, without knowing precisely what these charges are; and with your permission, if it is appropriate, I should like to read the charges so that I can argue to the charges.

The first specification of the first charge is as follows (reading):

"In that, during the month of June, 1942, the prisoners,"--the prisoners are then named--
"being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, secretly and covertly passed, in civilian dress, contrary to the law of war, through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went behind such lines and defenses in civilian dress within zones of military operations and elsewhere, for the purpose of committing acts of sabotage, espionage and other hostile acts, and, in particular, to destroy certain war industries, war utilities and war materials within the United States."

As the first specification gives the substance of the other charges, I will not at this time read all of them, except to say that the charge of Espionage is specifically covered and that there is a charge of Conspiracy, going to all the defendants, to commit the acts which are described in the first specification of the first charge.

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You will note that the specification does not, as would an indictment, set out any crime cognizable by a civilian court. I know of no statute which provides that it shall be a civil crime, if I may put it that way, triable by a civil court, to pass, during a time of war, first, in uniform, and then concealed as spies in civilian uniform, across the lines of the enemy of the country from which they came.

Therefore, first, this is an offense against the armed forces of the United States, cognizable by a military court from ancient law. We do not allege or intend to allege any civil crime. Therefore it seems to me that that argument falls, first of all.

Now, with respect to the other argument of counsel for the defendants, I think that all that is necessary is to call the Commission's attention to Article 38.

I think I need not say to the members of the Commission, as they must well know, that commissions for many years have been proper tribunals, either set up by the President, the Secretary of War, or by commanding Generals to try certain types of offenses. It is perfectly clear that one of the very purposes of commissions is to form a tribunal that is not bound by the rules of courts martial. It is true that where you wish to follow those rules, it is customary to do so, where it does not conflict with any of the powers or duties set up in the Commission appointing you.

Commissions are referred to from time to time in the Articles of War themselves. If I recollect correctly, they are referred to both in Article 81 and Article 82, under which these offenses are described; and particularly I refer to

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Article 38 of which Colonel Royall spoke.

Let us see precisely what Article 38 provides (reading):

"The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the District Courts of the United States."

Now, this is the essential part of this paragraph:

"Provided, That nothing contrary to or inconsistent with these articles shall be so prescribed."

We recognized from the beginning that commissions are not courts-martial and are not bound by the regulations of courts-martial, which seems to me, if I may use the expression, Hornbook military law. There is nothing, therefore, inconsistent in not following the rules of courts-martial, when you set up a commission.

All of the other regulations quoted by Colonel Royall are regulations with respect to courts-martial and are, therefore, not in any way applicable.

You must look, I take it, to the powers of this Commission and the basic power of the President to appoint a Commission to try enemies of the country in time of war. It does not seem to me that this is an appropriate place to argue at any length the question raised as to the jurisdiction of a court-martial where civil courts are sitting. That, at the appropriate time, I assume, will be for a civil court to

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decide, should the matter be brought to their attention.

In the same way this proclamation to which Colonel Royall referred is a proclamation dealing with the civil rights of enemies in civil courts. The law has always been that an Executive can certainly proscribe the procedure in time of war particularly with respect to aliens and, I take it, with respect to enemies.

But let me emphasize that this proclamation deals in no wise with the powers of the Commission. It deals with the grace that may be accorded to enemies and to aliens by a civil tribunal, and therefore you, it seems to me, with due respect, are not concerned with it.

Let me add that I cannot conceive of anyone successfully arguing that in time of war and in time of actual invasion by enemies, charged to be enemies, or by spies, charged to be spies--and we are dealing with charges, since there is no evidence before you--by persons coming in to commit sabotage, with that intention, changing their uniforms and putting on civilian garb or civilian dress, in order to get behind the military and naval lines established to prevent that very invasion--I cannot imagine any military tribunal holding that you have no jurisdiction. If you have any jurisdiction separate from the jurisdiction of District Courts, certainly that jurisdiction must exist under those circumstances. It can be so easily illustrated, but I will not take up the time of the Commission very much longer.

Supposing there had been an invading force, soldiers or submarines, or parachutists dropping behind the lines: there is no difference, as far as your jurisdiction is concerned,

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except the added difference that the crime is increased, because soldiers not only invaded this country, but they have changed themselves into civilians and, as such, have absolutely no rights.

Colonel Dowell. May it please the Commission, we shall cite what we believe is substantiation for the fact that these crimes alleged in these charges, with the exception of Spying, are civil offenses for which the statutes of the United States provide punishment; and we base the right of the defendant to go into civil courts upon the broad policy that this country is dominantly one in which government is exercised by civil authority, and that military authority comes to their assistance only in cases of necessity, where it is impracticable or impossible for the civil authorities to function in the manner prescribed by the Congress.

I start with the statement that that is one of the points upon which we fought the Revolutionary War, to get away from military domination, to make the civil authority ascendant and operative at such times as the civil authority is able and capable of operating.

Military Commissions and other similar courts, provost courts, councils of war, etc., have come into effect in our history at times when it was impracticable or impossible for civil authority to function. I cite the case of military government where our forces have taken enemy territory and deprived them of their own government, and they have set up something to take its place, to guarantee the rights of property and person, because there is nothing else there, and other courts obviously cannot function.

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We set up military commissions and provost courts, but even then our history has been that just as soon as it is practicable to set up a civil agency where our courts can function, the military assistance is no longer required and ceases, the civil authority taking its proper place.

That is applicable also in cases of martial law. It is quite proper to set up in a martial law situation the necessary courts, call them whatever name you will, or military commissions and other courts to protect the rights of persons and property in those localities where the civil courts for the time being are unable to function. Just as soon, however, as that situation ceases, so that the civil courts are again capable of functioning, it is improper for the military to continue to crowd them aside.

I need cite only the case of General Jackson in New Orleans, at the Battle of New Orleans, where he declared martial law and attempted to continue it after the civil courts were able and capable of functioning, to continue it against their will. After the situation was over General Jackson was cited in the Federal court on a charge of Contempt, and was fined \$1,000, which he did not get back for 30 years, and then only by Special Act of Congress and after being twice President of the United States, and only in the year before his death.

If we are incapable in a declared military law situation of setting up military courts to try civilians for offenses against the civil law, how can it be contended that in a situation which is not a military situation, or actively a military operation situation, these courts called Military Commissions may be set up for the trial of civilians?

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I cite just one more point. It is well known to us in the military service that soldiers are frequently arrested by civilians and turned over to the military authorities for trial in cases where there is concurrent jurisdiction, as a matter of comity, and because it saves expense to the civil authorities, and the military are more familiar with the soldier's situation and better capable of trying soldiers.

I present before specific statutes are cited the further observation that it is most unusual for civilians to arrest civilians for an offense cognizable by the civil law and triable in the courts which are open and ready to try those cases, to take them and turn them over to the military authorities for trial.

Colonel Royall. I could not improve, if the Commission please, and would not seek to do so, on anything that Colonel Dowell has said. I merely wish to supplement it by calling your attention to a few statutes which we contend deal sufficiently from the civil law standpoint with every offense charged here.

Title 50 of Chapter 4 of the United States Code, Section 31. The language of that section of course does not follow the words of these charges. That is immaterial. The substance of the prohibited acts is the same as the substance of the offenses here charged. This is a summary merely, but subsection A provides that--

"Whoever, for the purpose of obtaining information and with reason to believe that such information may be used to the injury of the United States, goes upon any government or defense property or installation or restrict-

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ed area, or obtains information concerning such a place;

"Any person who obtains or makes sketches, photographs, etc., of anything connected with the national defense for the purpose of obtaining information relative thereto with reason to believe that the same may be used to the injury of the United States;

"Any person who receives or obtains any document, photograph, plan, etc., connected with the national defense, having reason to believe that it will be disposed of contrary to the provisions of Title 50; or

"Any person who communicates or attempts to communicate any document, photograph, plan, etc., relating to the national defense to any person not entitled to receive it or wilfully fails to deliver the same to the officer or employee of the United States entitled to receive it."

The next section is more or less on Negligence, which would not arise here.

For each of these offenses there is a penalty provided, and that has been increased within the past year or two, from 2 to 10 years, apparently in contemplation of the emergency being imminent, showing that Congress has specifically acted on it with our situation in mind.

Section 32 of the same Title provides:

"Whoever with reason to believe that it may be used to the injury of the United States communicates any document, photograph, plan, etc., relating to the national defense to any foreign government or military or naval force or officer, agent, or employee of such foreign government, is subject to not more than 20 years imprisonment.

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ment in time of peace and not more than 30 years in time of war."

Which shows that Congress has expressly legislated not only for offenses in peace but offenses which are now committed.

The next sub-section provides:

"Any person in time of war, with intent that the information shall be communicated to the enemy, who collects, communicates, or attempts to elicit information with respect to movement or disposition of the armed forces of the United States or with respect to plans for military operations or with respect to fortifications, or any other information relating to the public defense which might be useful to the enemy, is subject to punishment by death or imprisonment for not more than 30 years."

That shows that for this offense in time of war, which is practically spying, or espionage with the elements of spying, in the civil courts the death penalty could be inflicted, and that Congress had taken that into account and had legislated for the war contingency as well as for peace times.

Section 34 provides punishment for conspiracy to do those things mentioned in the preceding sections.

Section 35 provides for harboring or concealing any person who has committed the foregoing offenses.

Section 36 authorizes the President by proclamation to designate restricted places under Section 31; which shows that in the designation of those restricted places Congress has legislated for an offense committed therein under civil procedure.

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Chapter 4 (a), sections 45 to 45 (d), relating to photographic defense installations, is not particularly material here.

Chapter 6 relates to sabotage. Section 102 thereof provides:

"Whoever, during war time, with intent to injure the United States in carrying on the war, wilfully injures or destroys any war material or premises for war utilities, shall be subject to a fine of not more than \$10,000 or imprisonment for not more than 30 years, or both."

Section 103:

"Whoever during war time attempts to injure the United States or interfere with carrying on the war, wilfully makes in a defective manner, or attempts to do so, any war material," etc.

That is another form of sabotage, and it is unnecessary to read that.

Anyone who destroys any national defense material is subject to ten years imprisonment and \$10,000 fine.

Anyone who at any time makes defective national defense material, etc., is subject to \$10,000 fine or 10 years imprisonment.

Title 18, Section 88, of the United States Code, deals with Conspiracy in connection with these matters.

It is perfectly manifest that Congress has legislated by civil law for everything that could conceivably be included in these charges. Not only is that true, but it is a matter of common knowledge of which this Commission could take judicial notice that, pending in Congress, either now or last week,

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are bills to increase these penalties, in some instances, to death, which indicates that Congress is still proceeding on the assumption that the problem is one for civil legislation for civil courts.

That supplements merely what Colonel Dowell has so excellently expressed. I just want to make one more observation on the second matter discussed by the Attorney General.

Article 38, which has been read to the Commission frequently, and which I shall not read again, makes a very real and definite distinction between the right to vary the rules in the District Court, which is qualified by the words "in so far as he shall deem practicable."

That relates merely to the rules of the District Court as applicable to a military commission. But there is no such qualification on the express provision in Article 38 that "nothing contrary to or inconsistent with these articles shall be so prescribed." That means, for military commissions; and it seems to me that there is no legitimate explanation of that language, certainly no court authority that we have been able to find--and our time has been limited--has construed it as meaning other than what it apparently means on its face.

In one instance, however, we would not even have to deal with Article 38. Article 46, which is specifically referred to in Article 50¹, deals with military commissions in the matter of review; and you do not have to resort to any construction of language. That expressly provides for a system of review which the Presidential Order has negatived and denied.

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There might possibly be some distinction in this connection on the basis of this motion between citizens and aliens; but since there is no allegation in the charges themselves that authorizes such distinction, it may arise later in the question of proof on certain of the charges.

In conclusion, we say that since there is a difference in some of the decisions on spying, in frankness to the Commission, these ^{other} charges, as we conceive the law, should be dismissed for lack of jurisdiction.

The President. Are there any further remarks?

The Judge Advocate General. With reference to the remarks of counsel for the defense I invite the Commission's attention to the fact that the 81st and 82nd Articles of War specifically give the power to a military commission to try the offenses of which these defendants are charged here by Charge 2 and Charge 3 before the Commission. So there can be no question but what this Commission has jurisdiction under those articles.

Article of War 15 provides:

"The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war be triable by such military commissions, provost courts, or other military tribunals."

The specification of Charge 1 of entering this country in the way stated in the specification shows very plainly a violation of the law of war.

The conspiracy charge at the end includes violation of

the law of war. Cases have always been tried, from time immemorial, by military commissions; and the fact that there may be in civil courts some statute that may cover a part of these crimes is no reason for saying that a military commission is deprived of its powers for that reason.

The comparison drawn with martial law by the counsel for the defense is an entirely different situation from that of the prisoners before the bar of this Commission today; that is, a situation existing in our own country, where we have our own forces, and declaring martial law for civil offenses. This is an offense against the law of war, of which this Commission has jurisdiction.

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Colonel Dowell. May it please the Commission: I think that in a number of articles of war, including 81, 82, 38, 46, and 50-1/2 by reference, and I think one other, mention is made of military commissions. There is no doubt whatever that military commissions may function in proper cases and that jurisdiction of the military commission over those cases is unquestionable provided the situation is such as to justify the military commission in taking cognizance of the case. I merely point out that since the civil law has provided for the trial of these offenses, except spying--and spying is also provided for in the civil law--it places jurisdiction of this offense under either court martial or military commission.

But as to the other offenses, let us keep in mind that the two jurisdictions may take cognizance. Why two? Certainly because there must be two situations in which they would take cognizance of those cases and have jurisdiction over them. I maintain that the reference to the military commission in the articles of war arises from the constitutional provision that the Congress shall make rules for the government of the Army and the Navy of the United States, so that is a rule made under that power and for taking care of the cases that I have generally mentioned, where the military is in close proximity or the civil authority is incapable of taking over jurisdiction and trying the cases, which is not true in this instance. The civil authority first took jurisdiction, and it has the machinery, the courts, the laws, and the penalties for disposing of the cases.

The President. There seems to be no further argument or discussion. Does any member of the Commission desire enlightenment from either side?

(There was no response.)

The President. The Commission will be closed.

(The Commission was then closed. When it reopened, the following occurred:)

The President. Are all the prisoners present?

The Guard. Yes, sir.

The President. Lieutenant Page, is there any reason why the Court should not reopen?

Lieutenant Page. None that I know of, sir.

The President. The Commission will reopen.

The Commission does not sustain the objection of the defense. Proceed.

The Judge Advocate General. I understand that there are further remarks to be made by the defense. I would suggest that perhaps it would clarify matters if before those motions are made the charges and specifications be read to the Court.

Colonel Royall. I think that should be done.

Colonel Munson. I shall now read the charges and specifications, the affidavit thereto, and the order of reference to this Commission for trial, during which the accused and the personnel of the prosecution and the defense are requested to stand.

CHARGES AND SPECIFICATIONS

"War Department, Washington, D. C. Charge Sheet.

"Charges and Specifications in Cases of Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel.

"Charge I: Violation of the Law of War

"Specification 1. In that, during the month of June, 1942, the prisoners, Ernest Peter

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Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, secretly and covertly passed in civilian dress, contrary to the law of war, through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went behind such lines and defenses in civilian dress within zones of military operations and elsewhere, for the purpose of committing acts of sabotage, espionage and other hostile acts, and, in particular, to destroy certain war industries, war utilities and war materials within the United States.

"Specification 2. In that, during the month of June, 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, appeared, contrary to the law of war, behind the military and naval defenses and lines of the United States, within zones of military operations and elsewhere, for the purpose of committing or attempting to commit sabotage, espionage, and other hostile acts, without being in the uniform of the armed forces of the German Reich, and planned and attempted to destroy and sabotage war industries, war utilities and war materials

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within the United States, and assembled together within the United States explosives, money and other supplies in order to accomplish said purposes.

"Charge II: Violation of the 81st Article of War

"Specification: In that, during the month of June, 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, and without being in the uniform of the armed forces of that nation, relieves or attempted to relieve enemies of the United States with arms, ammunition, supplies, money and other things, and knowingly harbored, protected and held correspondence with and gave intelligence to enemies of the United States by entering the territorial limits of the United States, in the company of other enemies of the United States, with explosives, money and other supplies with which they relieved each other and relieved the German Reich, for the purpose of destroying and sabotaging war industries, transportation facilities or war materials of the United States, and by harboring, communicating with, and giving intelligence to each other and to other enemies of the United States in the course of such activities.

"Charge III: Violation of the 82nd Article of War.

"Specification: In that, during the month of June, 1942, the prisoners, Ernest Peter Burger, George

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John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, were, in time of war, found lurking or acting as spies in or about the fortifications, posts and encampments of the armies of the United States and elsewhere, and secretly and covertly passed through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went about through and behind said lines and defenses and about the fortifications, posts and encampments of the armies of the United States, in zones of military operations and elsewhere, disguised in civilian clothes and under false names, for the purpose of committing sabotage and other hostile acts against the United States, and for the purpose of communicating intelligence relating to subh sabotage and other hostile acts to each other, to the German Reich, and to other enemies of the United States, during the course of such activities and thereafter.

"Charge IV: Conspiracy to Commit All of the Above Acts.

"Specification: In that, during the year 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and

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acting for and on behalf of the German Reich, a belligerent enemy nation, did plot, plan, and conspire with each other, with the German Reich, and with other enemies of the United States, to commit each and every one of the above-enumerated charges and specifications."

That is first signed in ink "F. Granville Munson," followed by "F. Granville Munson, Colonel, U. S. Army," typewritten.

"Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared Colonel F. Granville Munson, U. S. Army, this 3rd day of July, 1942, and made oath that he is a person subject to military law, and that he personally signed the foregoing charges and specifications, and that he has investigated the matters set forth in said specifications, and that the same are true, to the best of his knowledge and belief."

That is signed in ink "Myron C. Cramer" and is followed by "Myron C. Cramer, Major General, U. S. Army, The Judge Advocate General," typewritten.

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"WAR DEPARTMENT

"The Adjutant General's Office

"Washington

"July 6, 1942

"The Honorable Francis Biddle, Attorney General of the United States, and Major General Myron C. Cramer, The Judge Advocate General of the Army.

"1. By direction of the President, the attached charges and specifications, duly sworn to on July 3,

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1942, against Ernest Peter Burger, George John Dasch, Herbert Haupt (otherwise known as Herbert Hans Haupt), Heinrich Harm Heinck (otherwise known as Henry Harm Heinck), Edward John Kerling, Hermann Neubauer (otherwise known as Hermann Otto Neubauer), Richard Quirin, and Werner Thiel, are referred to you, for trial before the Military Commission established by an order of the President, dated July 2, 1942, as the Trial Judge Advocates of said Military Commission and the persons designated in said order to conduct the prosecution before said Commission, and, by further direction of the President, you are vested with all the powers and duties of a trial judge advocate of a general court-martial.

"2. The employment of a stenographic reporter or firm of reporters is authorized and three copies of the record of trial, for the use of the prosecution, and two copies of said record, for the use of the defense, in addition to the original copy to be submitted to the President, are authorized in each case before the Commission.

"By order of the Secretary of War:

"J. A. ULIO

"Major General,

"The Adjutant General."

Colonel Royall. May we have a copy of that at some appropriate time?

Colonel Munson. Yes. Are your clients ready to plead?

Colonel Royall. We want to make a motion to strike.

The President. May I ask you to repeat your last state-

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ment, Colonel?

Colonel Royall. We desire to make a motion to strike certain of the specifications. Is the Commission ready for me to proceed?

The President. If you please.

Colonel Royall. The defendants desire to move and do move to strike Charge 1, Specification 1. I assume, Colonel Ristine, that that is on behalf of all the defendants?

Colonel Ristine. Yes, sir.

Colonel Royall. That charge is a violation of the law of war.

The defendants contend that it is uncertain and indefinite in nature unless conceivably it could be construed to charge the offense of spying. If it does charge the offense of spying or is so intended or is so construed, it omits one essential element, namely, the intention to communicate to the enemy, and is therefore defective. The elements of spying, as defined by military authorities, embrace at least three elements: first, being within the lines or zones of operation; second, secrecy or acting under false pretenses; third, intention to communicate information. The last element is missing from this specification.

Furthermore, this specification in its other language cannot charge any violation of the law of war, as we understand the term. It merely might be construed to charge sabotage or espionage, which are not violations of the law of war as we conceive it, because they are specifically provided for by civil statute.

The term "espionage" is somewhat confusing. There apparently is a distinction between that and spying. As we conceive the authorities to be, the distinction is that

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espionage has nothing to do necessarily with going without the uniform or entering the country or the lines in that way; espionage can be committed by someone who is already in this country.

I suppose the Court would prefer me to take up all these motions to strike at one time, instead of stopping and having each one argued and determined separately?

The President. We will leave that to your discretion.

Colonel Royall. Then, sir, in the interest of preventing as much repetition as possible, we prefer to state our position on each of the charges and specifications and have the prosecution reply, unless there is a decision to the contrary.

The defendants move to strike Charge 1, Specification 2. The grounds of that are similar, the real difference between the two specifications being merely that in the first specification under Charge 1 the words are "passing within the lines," and in the second, "appearing within the lines"; and that in the first specification they say the defendants were not in the uniform of the German Reich, while in the second they say they were in civilian dress, or vice versa. Anyway, the considerations are practically the same.

Anticipating a possible argument of prosecution, it might conceivably be contended that these specifications charged guerrilla warfare, which would be a violation of the law of war. But an analysis of them shows that that is not the case. There is no charge, in the first place, that an element of guerrilla warfare requires an overt act against an armed force, and there is no such charge set forth.

There is also a question as to the sufficiency of the charge as to the zone of operations, in the case of whether or

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not it was guerrilla warfare, but I do not assume that it was the intention to charge that anyhow in these specifications.

There is, in our opinion, sufficient ground to strike out both those specifications under Charge 1, which we think is particularly applicable to the two citizens who are included among the defendants. We shall not go into that at this time; we do not think it is necessary.

Defendants next move to strike Charge 2, which is a violation of the 81st Article of War.

The President. Colonel Royall, may I interrupt you for a moment? Since it appears that this will be a presentation of one motion following another, as you intimated, we should like to have the defense supply us with the substance of its motions in writing.

Colonel Royall. When would the Commission desire that?

The President. We should be glad to have you continue, but we should also like to have you supply them to us in writing.

Colonel Royall. I think we have a rough memorandum here, which we could hand to you at the conclusion of the motions.

The President. Something that would be sufficient for us to make sure that we had not missed any points in your seriatim presentation.

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Colonel Royall. Mine is in my handwriting.

The President. How would you suggest, General Cramer, in the course of the hearing, when we want something in writing from either your side or the other, that we get it without wasting time? Would it be possible to have a stenographer here specially charged with taking such motions?

The Judge Advocate General. I think that can be done. There will not be many more motions after these are through. During the course of the trial there won't be any motions.

Colonel Royall. It is unlikely.

The Attorney General. So far as we are concerned, General McCoy, whenever you request us to submit anything in writing, since it would be in the nature of briefs and memoranda rather than in record, I will simply have one of my associates dictate it and bring it in.

The President. Would you accept that as an easy way to furnish us with the substance of your motion?

Colonel Royall. Yes, sir. We can do that. We are a little limited in force.

The President. I did not want in any way to delay the trial if I could devise some way in which the reporter could give us a transcript of the motions, or something of that sort.

The Judge Advocate General. You want the motions themselves and not the arguments?

The President. Not the arguments. I just wanted the motions, because there seemed to be quite a number, and I did not want to rely on our memory.

Colonel Royall. May we make this suggestion as to this motion, because, as General Cramer has stated, it is unlikely

that there will be any other prolonged motions, unless something arises? During the noon recess, which is fifteen minutes off and will come about the time, I imagine, this motion is ended, we will prepare a short and concise statement of our position and have it here and present it to the Commission.

The President. Thank you very much. That will be satisfactory.

Colonel Royall. This Article of War 81--I am sure the Commission is familiar with it--substantially provides against relieving or attempting to relieve enemies of the United States with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy of the United States.

That is the substance of the Article. In the first place, while we say this with some degree of doubt, we submit the proposition that Article 81 is intended to apply to citizens of the United States who aid the enemy. We cannot say that with any degree of assurance as there is little positive authority on Article 81, but a reading of it conveys to us that idea.

If that is correct, as to the aliens who are charged in this case there is no offense. That may sound like a strange result to reach, but it is manifest that there are certain acts which an alien could properly do which would be improper in the case of a citizen of this nation.

The specification does not prescribe which are aliens and which are not. One of two results would therefore follow, if our premise is right. The specifications would be defective for failing to allege an essential element, or the matter

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would have to be determined when the evidence is adduced, or it would be possible to amend by specifying which are aliens and which are residents.

Now, as to all of the defendants, there is another view or another reason why we think this charge and specification is defective, and that is that in substance it merely copies Article 81 and elaborates on it in language which, as we contend, merely charges at the most espionage and sabotage, which are covered by the civil law. We would repeat the same arguments on that as have heretofore been made, and there is no necessity for doing that.

Defendants further move to strike Charge 3 in the specification thereunder, and state frankly to the Commission that we are most uncertain as to whether that motion lies. I do not care to say anything more about that. We make it so that we may assert the right, because we are moving to strike the others. But I do not know of any very sound argument that we could advance in favor of it, and we will try not to advance merely captious arguments.

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With respect to Charge 4 and the specifications thereunder, we also move to strike. In the first place, that charge is conspiracy to commit the other acts--what I meant to say is that that charges conspiracy to commit the other acts.

Our position on that is twofold: that there is no law of war which embraces conspiracy as such, and therefore the charge does not lie. In the second place, we say that if it does lie, it is subject to the same defects for the conspiracy as arise in the case of the first charges, which specify different offenses. In other words, if they have not sufficiently

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charged the offenses in Charges 1, 2, or 3, of course the conspiracy to commit it could not be an offense properly charged.

There is no article of war covering conspiracy. I think that statement is correct.

The President. Will you recapitulate now your motions?

Colonel Royall. We move to strike each of the charges and each of the specifications and make a separate and specific motion as to each charge and as to each specification under each charge, on the grounds stated in the course of my presentation.

Colonel Dowell. May I add the ground of insufficiency, on the ground that the specifications, with the exception of that under Charge 3, do not specifically state the offense in such a way that would enable the accused to know the acts which are supposed to constitute the offense and against which he is required to defend.

Colonel Royall. That is an additional ground.

The President. We have about five minutes.

The Attorney General. I can confine my argument to that time, if you will bear with me.

May it please the Commission: The argument is based, it seems to me, on an entire misconception of the law of war. We are not confined to the Articles of War. We are charging offenses against the law of war, which is common law. That offense applies to the conspiracy.

As you gentlemen know, it is not necessary to find a statutory defined offense before a commission either in the Articles of War or elsewhere. I give as a famous example of

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the type of offense that we are charging the case of Major Andre, which was not an espionage case, though espionage was involved, but it was passing through the enemy lines with the purpose and intent of bribing an officer of the United States Army.

Moreover, as I have said before, whether or not the acts which will be proved constitute a civil offense has nothing to do with the situation, because the military offense triable by your Commission is totally different from a civil offense defined in a statute. Whether or not the same proof is necessary is irrelevant.

To show the difference itself, you simply have to refer to the penalties involved in the two offenses. The penalty for the military offense is entirely different from the penalty of the statutory civil offense.

In connection with the specifications themselves, chiefly for the purpose of clarity, I draw your attention to the fact that the two specifications of Charge 1 allege separate offenses in substance, in that in Charge 1 the specification is that these defendants, and I quote, "went behind such lines and defenses in civilian dress," whereas in Specification 2 the charge is that the defendants "appeared, contrary to the law of war, behind the military and naval defenses and lines of the United States."

With respect to Article 81, it seems to me only necessary to point out that the article is in nowise limited, as counsel for the defense suggests. The article is in its title, "Relieving, Corresponding with, or Aiding the Enemy," and it opens, "Whosoever relieves or attempts to relieve."

It is not limited to citizens, aliens, or anyone else. Whosoever does this is punishable in the manner specified.

6 It seems to me that these motions really, in substance, go to the root of the matter; and although the question is raised technically in a somewhat different question, it seems to me to be already covered by the ruling of the Commission, which has held, I take it, that this Commission has jurisdiction over the defendants, is properly constituted, and has the duty and power to try offenses against the law of war; and that therefore a discussion of whether or not other offenses committed against the civil statutes are involved is clearly and totally irrelevant.

There has been suggestion, I think, here that these charges are not specific, and if the motion is made on that ground it is out of order. Not being thoroughly familiar with your procedure, I take it there could be a motion for, as we lawyers say, a bill of particulars or for clarification, which would be in order; but I take it the motion is not based on that at all, but goes to the roots of the matter, which seem to me to have been disposed of by the ruling that the Commission has already made.

Colonel Royall. I merely wish to add this. We donot think that these arguments are covered by the rulings already made.

In reply specifically to the Attorney General, it is true that there is such a thing as a law of war aside from the specific Articles of War, but we repeat that we do not think they are charged, except in the case of spying, which we are not arguing about, with any established law of war which has

been violated. The mere fact that it is a common law does not mean that there must not be some precedent or some criterion, and we do not know of any precedent or criterion for any of these charges except spying.

Now, the word "whosoever" obviously cannot mean that it is a violation of law for a German to aid the German Government, any more than it could be a violation of law for an American to aid the American Government. Therefore, we think there is a very real distinction between aliens and citizens under this 81st Article of War.

The President. The Commission will recess for lunch and open at 2 o'clock.

(At 12:30 o'clock p.m., the Commission recessed until 2 o'clock p.m.)

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A F T E R R E C E S S

The Commission reconvened at 2 o'clock p. m., upon the expiration of the recess.

The President. The Commission is now open.

Colonel Munson. It is requested that the record show that all the personnel of the Commission, of the prosecution, and of the defense who were present at the close of the previous session in this case are again present, and that all the accused, to wit, eight, and the reporter also are present.

Mr. President, since the last session, Major William T. Thurman, of the Judge Advocate General's Department, has been given a pass, and it is requested that he be permitted to take the oath of secrecy as an assistant to the trial judge advocate, the Judge Advocate General.

Shall I administer the oath, or do you wish to administer it?

The President. You may administer it.

Colonel Munson. Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Major Thurman. I do.

Colonel Dowell. I wish to state that Captain Hummell, of associate counsel, is absent on a temporary mission.

Colonel Royall. With reference to the inquiry of the President as to the possibility of reducing to writing our contentions under the motion to strike, that has been done. We should like these contentions to be incorporated in the record, if that is permissible, not in substitution for but in addition to the contentions heretofore made, although they are

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in fact and in large part a summary of them.

The President. If there is no objection, that will be done.

Colonel Royall. They are as follows:

"Summary of Defense Motions to Strike Under Section 71c of Manual for Courts-Martial

"(a) Specification 1 of Charge 1. This specification charges a violation of the laws of war. The defense recognizes the laws of war and the fact that violations thereof may constitute punishable offenses. The wording of specification 1 is so indefinite as not to inform the defendants of the particular offense under the laws of war with which they are charged, unless it be the offense of spying. The offense of spying is insufficiently set forth since the essential element of intent to communicate with the enemy is not alleged. In this connection, note the definition of spying as contained in the Hague Convention:

"'A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.'

"The offenses of sabotage, espionage, etc. are not recognized as part of the laws of war and, in any event, are fully covered by our statutes, making those offenses civil crimes. The defense knows of no precedent under the laws of war making it an offense for enemy civilians to be in this country is not engaged in spying.

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"(b) Specification 2. Motion to strike this specification is made on the same grounds as set forth in Specification 1 of Charge 1.

"(c) Specification of Charge 2. This specification charges violation of the 81st Article of War. This Article provides against relieving the enemy with arms, ammunition, etc. and holding correspondence with and giving intelligence to the enemies of the United States. The defense contends that by its nature this offense does not apply to persons who are citizens of the enemy country and therefore it does not apply to six of these defendants. Obviously it is perfectly proper for a German citizen to supply arms and ammunition to the German armed forces. Therefore, this specification should be stricken as to the alien defendants. Furthermore it should be noted that this specification does not allege that any of the defendants relieved any of the armed forces of the enemy, or any member thereof, but merely that the various defendants relieved and communicated with each other. This alone does not constitute a violation of Article 81.

"(d) Specification of Charge 3.

"The motion to strike this specification is made on the general grounds stated in making the pleas to the jurisdiction and on the general grounds asserted as to the other specifications.

"(e) Specification of Charge 4.

"The motion of the defense to strike this specification is based on the fact that it must fall

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with the striking out of the other specifications and on the further fact that neither the laws of war nor the Articles of War make a mere conspiracy an offense which is punishable, nor do they provide any penalty therefor whatsoever."

The President. Does this complete your argument?

Colonel Royall. On this question, yes.

Colonel Dowell. Speaking not on this question but in justice to Colonel Royall, an associate in this case, and because of his feeling in the matter lest it might prejudice the case of our defendants, the arrangement as to presentation and participation in their defense by certain individuals is according to my desire as senior defense counsel.

The Judge Advocate General. I fail to understand just what counsel is driving at.

The President. Do you want to have it read as you stated it, Colonel Dowell?

Colonel Dowell. Yes, sir.

The President. The reporter will read the statement made by Colonel Dowell.

The Reporter (reading).

"Colonel Dowell. Speaking not on this question but in justice to Colonel Royall, an associate in this case, and because of his feeling in the matter lest it might prejudice the case of our defendants, the arrangement as to presentation and participation in their defense by certain individuals is according to my desire as senior defense counsel."

The Judge Advocate General. There is no objection.

The President. If there is no objection, it will be so

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accepted.

The Attorney General. We have nothing more to argue.

The President. The Court will be closed.

(The Court was then closed. When it reopened,
the following occurred:)

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The President. The Commission is opened.

The motions of the defense to strike are not sustained.

Colonel Munson. I will now ask the accused to plead to the charges and specifications, taking them in the order in which they are named in the charge sheet.

PRISONERS' PLEAS TO CHARGES AND SPECIFICATIONS

Colonel Munson. Will Ernest Peter Burger rise?

(Ernest Peter Burger stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Burger. Not guilty.

The Attorney General. May I interrupt, Mr. President?

I should like this defendant and the other defendants to answer their own pleas, with no disrespect to counsel.

Colonel Royall. I did not know what the custom was. Customarily in civil courts counsel pleads for the prisoner.

The President. That is the case in usual military courts, but if you have no objection to the Attorney General's suggestion, we will proceed in that manner.

Colonel Royall. I have none at all.

The President. The defendants will then plead personally.

Colonel Munson. You have already pleaded not guilty to Specification 1 of Charge 1.

Mr. Burger. Not guilty.

Colonel Munson. To specification 2 of Charge 1?

Mr. Burger. Not guilty.

Colonel Munson. To Charge 1?

Mr. Burger. Not guilty.

Colonel Munson. To the Specification 1 of Charge 2?

Mr. Burger. Also not guilty.

Colonel Munson. You plead not guilty to all of the charges and specifications?

Mr. Burger. That is right.

Colonel Munson. Then, without going through the list, that plea will be entered, with the permission of the Commission--not guilty to all the charges and specifications.

Mr. Burger. Yes, sir.

Colonel Munson. George John Dasch.

(George John Dasch stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To Charge 1?

Mr. Dasch. Same way.

Colonel Munson. Not guilty?

Mr. Dasch. That is right.

Colonel Munson. To the Specification of Charge 2?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To Charge 2?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To the specification of Charge 3?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To Charge 3?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To the specification of Charge 4?

Mr. Dasch. Not guilty, sir.

Colonel Munson. To Charge 4?

Mr. Dasch. Not guilty, sir.

Colonel Munson. You therefore plead not guilty to all of the charges and specifications and desire that plea of not guilty to be entered?

Mr. Dasch. That is right, sir.

Colonel Munson. Herbert Haupt.

(Herbert Haupt stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Haupt. Not guilty.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Haupt. Not guilty.

Colonel Munson. To Charge 1?

Mr. Haupt. Not guilty.

Colonel Munson. To the specification of Charge 2?

Mr. Haupt. Not guilty.

Colonel Munson. To Charge 2?

Mr. Haupt. Not guilty.

Colonel Munson. To the specification of Charge 3?

Mr. Haupt. Not guilty.

Colonel Munson. To Charge 3?

Mr. Haupt. Not guilty.

Colonel Munson. To the specification of Charge 4?

Mr. Haupt. Not guilty.

Colonel Munson. To Charge 4?

Mr. Haupt. Not guilty.

Colonel Munson. Then, you plead not guilty to all of the charges and specifications and desire that plea of not guilty to be entered on your behalf?

Mr. Haupt. Yes, sir.

Colonel Munson. Henry Harm Heinck.

(Henry Harm Heinck stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Heinck. Not guilty.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Heinck. Not guilty.

Colonel Munson. To Charge 1?

Mr. Heinck. Not guilty.

Colonel Munson. To the specification of Charge 2?

Mr. Heinck. Not guilty.

Colonel Munson. To Charge 2?

Mr. Heinck. Not guilty.

Colonel Munson. To the specification of Charge 3?

Mr. Heinck. Not guilty.

Colonel Munson. To Charge 3?

Mr. Heinck. Not guilty.

Colonel Munson. To the specification of Charge 4?

Mr. Heinck. Not guilty.

Colonel Munson. To Charge 4?

Mr. Heinck. Not guilty.

Colonel Munson. Then, you desire a plea of not guilty to be entered?

Mr. Heinck. Yes, sir.

Colonel Munson. To all the charges and specifications, on your behalf?

Mr. Heinck. Yes, sir.

Colonel Munson. Edward John Kerling.

(Edward John Kerling stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To Charge 1?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To the specification of Charge 2?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To Charge 2?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To the specification of Charge 3?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To Charge 3?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To the specification of Charge 4?

Mr. Kerling. Not guilty, sir.

Colonel Munson. To Charge 4?

Mr. Kerling. Not guilty.

Colonel Munson. You plead not guilty, therefore, to all of the charges and specifications and desire that plea entered?

Mr. Kerling. Yes, sir.

Colonel Munson. Hermann Neubauer.

(Herman Neubauer stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Neubauer. Not guilty.

Colonel Munson. To Specification 2 of Charge 1?

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Mr. Neubauer. Not guilty.

Colonel Munson. To Charge 1?

Mr. Neubauer. Not guilty.

Colonel Munson. To the specification of Charge 2?

Mr. Neubauer. Not guilty.

Colonel Munson. To Charge 2?

Mr. Neubauer. Not guilty.

Colonel Munson. To the specification of Charge 3?

Mr. Neubauer. Not guilty.

Colonel Munson. To Charge 3?

Mr. Neubauer. Not guilty.

Colonel Munson. To the specification of Charge 4?

Mr. Neubauer. Not guilty.

Colonel Munson. To Charge 4?

Mr. Neubauer. Not guilty.

Colonel Munson. You plead, therefore, not guilty to all the charges and specifications and desire that plea entered; is that correct?

Mr. Neubauer. Yes, sir.

Colonel Munson. Richard Quirin.

(Richard Quirin stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Quirin. Not guilty.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Quirin. Not guilty.

Colonel Munson. To Charge 1?

Mr. Quirin. Not guilty.

Colonel Munson. To the specification of Charge 2?

Mr. Quirin. Not guilty.

Colonel Munson. To Charge 2?

Mr. Quirin. Not guilty.

Colonel Munson. To the specification of Charge 3?

Mr. Quirin. Not guilty.

Colonel Munson. To Charge 3?

Mr. Quirin. Not guilty.

Colonel Munson. To the specification of Charge 4?

Mr. Quirin. Not guilty.

Colonel Munson. To Charge 4?

Mr. Quirin. Not guilty.

Colonel Munson. You plead, therefore, not guilty to all the charges and specifications and desire that plea entered on your behalf?

Mr. Quirin. Yes, sir.

Colonel Munson. Werner Thiel.

(Werner Thiel stepped forward.)

Colonel Munson. How do you plead to Specification 1 of Charge 1?

Mr. Thiel. Not guilty.

Colonel Munson. To Specification 2 of Charge 1?

Mr. Thiel. Not guilty.

Colonel Munson. To Charge 1?

Mr. Thiel. Not guilty.

Colonel Munson. To the specification of Charge 2?

Mr. Thiel. Not guilty.

Colonel Munson. To Charge 2?

Mr. Thiel. Not guilty.

Colonel Munson. To the specification of Charge 3?

Mr. Thiel. Not guilty.

Colonel Munson. To Charge 3?

Mr. Thiel. Not guilty.

Colonel Munson. To the specification of Charge 4?

Mr. Thiel. Not guilty.

Colonel Munson. To Charge 4?

Mr. Thiel. Not guilty.

Colonel Munson. You plead not guilty to all the charges and specifications and desire that plea entered on your behalf?

Mr. Thiel. Yes, sir.

OPENING STATEMENT ON BEHALF OF THE PROSECUTION

The Attorney General. May it please the Commission: I understand it to be customary to make a brief opening for the prosecution. I shall therefore do so now, with your permission.

You have already read the charges. The prosecution will show that sometime in April of 1942, and during the months of February and March, but chiefly in April, the German High Command, through a lieutenant in the German Army, Walter Kappe, approached these men in order to enlist them in a sabotage camp. Some of them had been known by Kappe when Kappe was previously in the United States. These men and others agreed to go to the sabotage camp, and about the 10th of April of 1942 joined this camp, not very far from Berlin, a place called Brandenburg.

They were trained approximately from April 10 to April 30 in various ways. They were trained in the use of explosives, in the use of timing devices and timing clocks, in

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secret handwriting, in personal histories which they could use when they got to the United States.

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They received forged registration certificates--I mean registration under the Army of the United States to be used in this country--and forged Social Security cards. Each of them was given such cards.

The President. What kind of cards, please?

The Attorney General. Social Security cards, cards showing that they were entitled to the benefits of the Social Security Act of the United States.

After April 30th, the training having been approximately from April 10th to April 30th, they were given a recess until approximately the 12th of May. They were then taken to Berlin and the environments of Berlin and were shown certain docks, railroads, railroad cars, locomotives, plants of the Farbenindustrie, which manufactured aluminum, and they were told how to use the explosives when they got to the United States, by showing them the plants in Germany.

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They were then taken to a place called Lorient, which is near Bordeaux, in France, used as a German submarine base.

Meanwhile, at the camp they had been divided into two groups. Each group had a leader. Each group consisted of four men and therefore these defendants naturally divided themselves up into what I will call the First Group, of which Dasch was the leader, and which consisted of Dasch, Burger, Heinck and Quirin.

The Second Group, of which Kerling was the leader, consisted of Kerling, Neubauer, Haupt and Thiel.

Most of the members of each group had aliases which they were to use in the United States. Occasionally in the testimony it may be that an individual will be referred to by his alias, and therefore I will mention the aliases of the defendants who had aliases.

Heinrich Harm Heinck was to use the alias "Kayner."

~~Ernest Peter~~ Burger was to use the alias "Richard
Richard Quirin
Quintas."

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Kerling was to use the alias "Edward Kelley."

Hermann Neubauer was to use the alias "Hermann Nicholas."

Werner Thiel was to be known as "John Thomas."

I repeat that the members of the first group were George Dasch, the leader, Ernest Peter Burger, Heinrich Harm Heinck, and Richard Quirin. That was the first group.

The second group were Edward Kerling, who was the leader of that second group, Hermann Neubauer, Herbert Haupt, and Werner Thiel.

Part of the course consisted in studies of maps of certain parts of the United States and certain of the water supply systems of the United States. Specific instructions as to the type of sabotage were given separately to each group. I do not mean by that that the other members of the other group did not know what they were, because they did, but each group was given a definite job to do when he came to this country.

For instance the first group--and you will remember that that is the group of which Dasch was the leader--were trained, coached, and directed to do sabotage in the aluminum plants in this country, and specifically in the aluminum plants of Alcoa, Tennessee, at East St. Louis, at Messina, New York, and in the Cryolite plant of the Aluminum Company at Philadelphia.

The first group, of which Dasch was the leader, were also instructed as their main objects in sabotaging locks in the Ohio River on a designated area of the river between Pittsburgh and Louisville. They were also directed to what was known as nuisance sabotage, wherever it was convenient to perform that act. Such acts were not specifically designated.

The second group, of which Edward Kerling was the leader,

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were instructed to do sabotage, roughly speaking, on the railroads; the Pennsylvania Railroad station at Newark, the Hellsgate Bridge, points which were not, I think, specified, on the Chesapeake & Ohio Railroad, and at Niagara Falls.

They were then put into a train and taken from Berlin to Paris; from Paris to Bordeaux; from Bordeaux to Lorient, where the submarine base was situated.

Group 2 left before Group 1. Group 2 left on a German submarine on the 26th of May. Group 1 left on a submarine on the 28th of May.

Group No. 1 landed on a beach on Long Island. Group No. 2 landed, a few days later, on a beach in Florida. The landing of the first group, or Group No. 1, on Long Island, was on June 13; the landing of the second group was on June 17.

Before they started, the leaders of the groups were given large sums of money to be distributed to the groups. Each member of the individual group was given a money belt containing substantial sums of money which he was to use in this country for purposes which were designated.

The first group landed, as I said, on Long Island. The submarine came close to the shore. It was a foggy night, and they were landed in a rubber boat from the submarine. They came up on the beach, and at that time encountered a Coast Guardsman; and I will, of course, call him to testify to what occurred.

As I do not want to prolong this introductory statement, I will say that at that point Group No. 1 buried four cases of explosives, time fuses and various timing devices in the sand. They had intended to send back to the submarine their naval uniforms which they wore on the submarine and which

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they wore on landing, in accordance with the instructions, to be able to show that they were, if they were caught at that very moment, members of the armed forces of the German Reich.

They did not have time to do that on account of the Coast Guard man's being there, and instead of sending their uniforms back in a duffle-bag, as it was intended that they should do, the rubber boat went hastily back to the submarine, and the clothes were buried. They also buried the cases containing the explosives to which I have referred.

The Florida group, when landed, did send their uniforms back to the submarine in a duffle-bag. They buried explosives on the beach.

Subsequently the eight defendants went to various parts of the United States, and we will describe that as the testimony develops.

I might also add that all of these defendants had lived for some time in the United States and been employed here for several years in each instance before they went back to Germany.

I shall introduce certain documents showing the military, naval, and coast guard direction of the territory which was invaded by these defendants, and I will then show--and I am not going into details--by confessions obtained from all of these defendants or from some of these defendants what occurred after they reached this country. I may also call some of the defendants themselves to testify. I will then bring in and exhibit to you what was recovered from the boxes. I will bring in their clothes and show you the actual uniforms that they wore, show you that they wore German military caps and

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German uniforms.

I think it is unnecessary for me to go into any further detail with respect to the evidence.

Colonel Royall. If the Commission please, as I understand, it is optional whether or not an opening statement should be made by the defense. The defendants do not desire to make any opening statement in this case.

The Attorney General. With the Commission's permission I will introduce certain preliminary matter.

I wish to introduce, first, a memorandum for the Provost Marshal General, dated July 3, 1942, and signed by Major General Ulio, with respect to the detention of the prisoners. I should like to have this marked "Government Exhibit 1", or "G-1." (After a pause) May I correct the form of my request. I should like to have it marked "P-1", meaning Prosecution Exhibit No. 1.

(Letter dated July 3, 1942, from Major General Ulio to the Provost Marshal General was marked P-1 and received in evidence.)

(Exhibit P-1 is as follows:)

EXHIBIT P-1.

"July 3, 1942

"MEMORANDUM for the Provost Marshal General, Military District of Washington

"Subject: Receipt of prisoners.

"1. The Secretary of War directs that you receive and keep in custody until further orders from the Federal Bureau of Investigation, Department of Justice, the following named prisoners, to be tried before

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a military commission:

"Ernest Peter Burger,

"George John Dasch,

"Herbert Haupt,

"Heinrich Harm Heinck,

"Edward John Kerling,

"Hermann Neubauer,

"Richard Quirin, and

"Werner Thiel.

"2. The Secretary of War further directs that defense counsel for said prisoners may have access to them at all times prior to their trial and confer with them without the presence of any other party. The defense counsel, as at present constituted, are the following officers: Colonel Cassius M. Dowell, Colonel Kenneth Royall, Major Lauson H. Stone, and Captain William G. Hummell. On oral representation of either of the major defense counsel that officers other than those named herein are of defense counsel, they may have similar privileges without further permission being obtained.

"J. A. ULIO,
Major General,
The Adjutant General.

"A true copy of original signed in my presence, this 3rd day of July, 1942.

"F. G. MUNSON
Colonel (J.A.G.D.) A.G.D."

I should like to offer Exhibit P-2, which, with your permission, I will read, as I have no copy of it (reading):

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EXHIBIT P-2.

"OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

July 3, 1942

"MEMORANDUM FOR MR. HOOVER.

"Will you be kind enough to turn over the custody
and control of the following persons to the Secretary of
War:

Ernest Peter Burger

George John Dasch

Herberg Haupt

Heinrich Harm Heinck

Edward John Kerling

Hermann Neubauer

Richard Quirin

Werner Thiel

"Francis Biddle
Attorney General"

May I ask the Commission to accept these exhibits as
they are offered.

The President. They will be accepted if there is no
objection.

The Attorney General. I should like to offer in evidence
Exhibits P-3 to P-10, inclusive, which are identical except
for the name of each individual defendant. I will read the
first one (reading):

EXHIBIT P-3.

"Washington, D. C.,

July 4, 1942

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"On this date I received control and custody, from the Federal Bureau of Investigation, over the following-named prisoner:

"ERNEST PETER BURGER

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-4.

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from the Federal Bureau of Investigation, over the following-named prisoner:

"GEORGE JOHN DASCH

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-5

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from the Federal Bureau of Investigation, over the following-named prisoner:

"HERBERT HAUPT

"Albert L. Cox,
Brigadier General,
U. S. Army"

EXHIBIT P-6.

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from the Federal Bureau of Investigation, over the following-named prisoner:

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"HEINRICH HARM HEINCK

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-7

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from
the Federal Bureau of Investigation, over the following-
named prisoner:

"Edward John Kerling

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-8

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from
the Federal Bureau of Investigation, over the following-
named prisoner:

"HERMANN NEUBAUER

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-9

"Washington, D. C.,
July 4, 1942

"On this date I received control and custody, from
the Federal Bureau of Investigation, over the following-
named prisoner:

"RICHARD QUIRIN

"Albert L. Cox
Brigadier General,
U. S. Army"

EXHIBIT P-10.

"Washington D. C.,
July 4, 1942

"On this date I received control and custody, from the Federal Bureau of Investigation, over the following-named prisoner:

"WERNER THIEL

"Albert L. Cox
Brigadier General,
U. S. Army"

(The foregoing exhibits, numbered P-3 to P-10 inclusive were received in evidence.)

The President. Will you please show any such exhibits to the defense counsel?

The Attorney General. Yes, Mr. President; I will.

I now offer in evidence Prosecution Exhibit No. 11, which is a proclamation, headed Public Proclamation No. 1. This is offered for the purpose of showing that the Eastern Defense Command embraces the entire Atlantic Coast and a portion of the Gulf Coast of the United States, and by its geographic location it was apparently subject to attack. I am reading from the proclamation:

"and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such hostile operations."

The President. What is the date of it?

The Attorney General. The date of the proclamation is May 16, 1942. I hand up to the Commission copies of the proclamation.

Colonel Royall. To that the defendants object not only

on the ground of identification and verification, but on the ground of immateriality. It is our position that this has no significance in connection with the charges; that the fact that an area has been proclaimed in the manner in which it was proclaimed here establishes no fact as to its being a combat area or an area which would differ from other areas, in connection with these charges.

The Attorney General. It seems to me to be unnecessary to argue that point, except that such an attack as was envisaged two months before subsequently took place, and that certain area was declared to be under the control of the Army, as stated in the proclamation. It seems to me that counsel's argument covers matter which has already been substantially dealt with, and therefore I do not propose to argue it any further, unless you wish me to.

Colonel Royall. May I suggest a further remark as to the competency of this exhibit. If this proclamation is effective for the purpose for which it is offered, it follows that the entire area, which is all the Eastern Seaboard States, covers area even to and through the mountains; and it is inconceivable to us that a proclamation of this kind could have the effect of conferring on any military court or commission additional jurisdiction which it otherwise would have a right to exert over that wide area.

Moreover, we think that a proclamation which covers such a vast territory could be the basis for any showing in the sense that the word might be used in connection with violating military law, and we think that the proclamation with the accompanying map or plat is incompetent and should not

be received in evidence by the Commission.

The President. Is there anything further, Mr. Attorney General?

The Attorney General. I have no further argument on this subject with respect to counsel's objection.

The President. If there is no objection on the part of any member of the Commission, the objection of the defense counsel is not sustained.

(Public proclamation No. 1 was marked Exhibit P-11 and received in evidence.)

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The Attorney General. The prosecution offers in evidence Exhibit P-12. This exhibit is a certified copy of a chart showing the areas comprising the Eastern sea frontier and the Gulf sea frontier as they existed during the period of June 12 to June 18, inclusive. It is certified by the Chief of Staff and attested by the Secretary of the Navy. It is marked "Confidential," and I take it that the chart itself is confidential.

I also offer in connection with this exhibit a separate paper, which is, however, really a part of the exhibit, marked as Prosecution Exhibit 12-1/2, which describes by metes and bounds the area of the territory shown on the map. I have shown these to counsel for the defense.

The President. I take it that these are in connection with both the naval and the military defense areas, are they not?

The Attorney General. Yes.

Colonel Royall. The defense desires to object to that upon grounds similar to those stated in the case of the other paper but not on the ground of identification or authentication.

The President. I take it on the ground of relevancy?

Colonel Royall. That is right, sir--relevancy and materiality.

Colonel Dowell. The defense offers another observation. I believe that the Attorney General mentioned the southern and the eastern zones, whereas I believe the map shows the entire United States divided into defense commands.

The Attorney General. Well, I quoted the words of the proclamation.

Colonel Dowell. He meant especially the southern and eastern.

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The President. Subject to objection from any member of the Commission, the objection of the defense is not sustained, and the papers will be accepted in the record.

(Certified copy of chart showing areas comprising Eastern sea frontier and Gulf sea frontier as they existed during the period June 12 to June 18, inclusive, and paper describing by metes and bounds the area of territory shown on map were marked as Exhibits P-12 and P-12-1/2, respectively.)

Colonel Royall. I should like to say to the Commission that ordinarily when documents are introduced, particularly if they are voluminous and we are not familiar with them, we should like to have them read. I think that that is our privilege. It was not our intention, as I so informed the Attorney General, to have this first proclamation read. However, since the second is so closely related to it and covers the entire country, and since we are not familiar with it and, I assume, the Commission in its entirety is not, I believe we would prefer this to be read.

The President. Will you please have it read at the request of the defense counsel?

Mr. Cox. Exhibit P-11 reads as follows:

"Headquarters Eastern Defense Command and First Army,
"Governors Island, N. Y.

"Public Proclamation No. 1.

"To: The people within the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, part of the State of Florida, and the District of Columbia.

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"Whereas, by virtue of orders issued by the War Department on December 20, 1941, and March 18, 1942, that portion of the continental United States east of the following line: The Ohio-Pennsylvania boundary, the West Virginia-Pennsylvania boundary, the West Virginia-Maryland boundary, the West Virginia-Virginia boundary, the Kentucky-Virginia boundary, the Tennessee-Virginia boundary, the Tennessee-North Carolina boundary, the Tennessee-Georgia boundary, the Alabama-Georgia boundary to its junction with Florida thence south along the Apalachicola River, has been established as the Eastern Defense Command under my command; and

"Whereas, by Executive Order 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, with authority over such military areas as in such Executive Order prescribed; and

"Whereas, the Secretary of War on April 22, 1942, designated the undersigned as Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Eastern Defense Command; and

"Whereas, the Eastern Defense Command embraces fifteen States, part of another State, and the District of Columbia, inhabited by millions of loyal citizens of

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the United States and hundreds of thousands of persons not yet citizens of the United States, but equally loyal; and

"Whereas, the economic life of this large portion of the population of our contry, dwelling within the Eastern Defense Command, should be disturbed as little as may be consistent with requirements of adequate National Defense and internal security; and

"Whereas, the Eastern Defense Command embraces the entire Atlantic Coast and a portion of the Gulf Coast of the United States and by its geographical location is particularly subject to attack, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such hostile operations;

"Now, Therefore, I, Hugh A. Drum, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Eastern Defense Command and First Army, charged with the defense of the Eastern seaboard, do hereby declare and proclaim that:

"1. The present situation requires as a matter of military necessity the establishment, in the territory embraced in the Eastern Defense Command within the continental United States, of Military Areas, and for that purpose, I do hereby prescribe all of the territory in the several States of the

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United States lying east and northeast of the westerly boundary line of the Eastern Defense Command, including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, part of the State of Florida, and the District of Columbia, to be a Military Area and to be designated as the Eastern Military Area, as the same is shown on the map.

"2. The functional subdivisions of the Eastern Military Area for purposes of enforcement of restrictions and orders issued from this Headquarters are the existing Corps Areas, namely, the First Corps Area, with Headquarters at Boston, Massachusetts; the Second Corps Area, with Headquarters at Governors Island, New York; the Third Corps Area, with Headquarters at Baltimore, Maryland; and the Fourth Corps Area, with Headquarters at Atlanta, Georgia. The Commanders of said Corps Areas are charged with responsibility for the enforcement of the restrictions and orders pertaining to their respective Corps Areas.

"3. The protection of American commerce and that of the United Nations from damage or destruction by enemy attack, and the prevention of enemy action against our shores, along the Atlantic and Gulf Seaboard, involve the effective control of artificial lighting along these coasts and for a reasonable distance in the rear thereof. For the purpose of such control, the existing restrictions and orders of the Commanding Generals of the four Corps Areas of

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the Eastern Military Area are hereby adopted and declared to be a part of this Proclamation. Corps Area Commanders are designated as the authorities to promulgate the necessary restrictions and orders for control.

"4. Wilful violation of any such restriction or order by an alien enemy, or repeated careless violations, even if not wilful, are cause for expulsion, internment or prosecution; similar violations by persons other than alien enemies are cause for expulsion or prosecution.

"5. Nothing contained herein shall be construed as limiting or modifying the duty and responsibility of the Department of Justice under the Proclamations of the President of December 7 and 8, 1941, insofar as the enforcement of rules and regulations for the conduct and control of alien enemies is concerned, or otherwise.

"6. The Corps Areas in the Eastern Military Area, each within its respective sphere of activities, and such federal, state, municipal and local agencies, as the Commanding General, Eastern Defense Command, with the consent of such agencies, may from time to time deem advisable specifically to designate, are hereby designated as the agencies to enforce the provisions of these restrictions and orders and such restrictions and orders as may subsequently be issued by him; and these agencies, under the coordination of the Commanding General, Eastern Defense Command, have jurisdiction to conduct the investigations

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necessary to their respective enforcement thereof.

"7. In accordance with representations made to the Governors of the States within the Eastern Military Area and the Commissioners of the District of Columbia, it is specifically requested that state and municipal police, and other officials and civilians within the States affected by this Proclamation, assist the agencies charged with enforcing restrictions by reporting to them the names and addresses of all persons believed to have violated restrictions, and such other information as may be called for by these agencies.

"8. A copy of this Proclamation shall be displayed for public inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the Eastern Military Area. Additional proclamations, announcements, restrictions, and orders will be issued from this Headquarters as occasion demands. Copies of such additional proclamations, announcements, restrictions, and orders will be available for inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the Eastern Military Area. It shall be the duty of every person found within the Eastern Military Area to familiarize himself with the terms of every proclamation, announcement, restriction, or order issued by this Headquarters.

"The assistance of public-spirited and patriotic newspapers, periodicals, radio and other media of public information within the Eastern Military Area is earnestly

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solicited and it is confidently expected that they will publish in full in a prominent position this Proclamation and every proclamation, announcement, restriction, or order issued by this Headquarters pursuant to this Proclamation.

"H. A. DRUM,

"May 16, 1942. "Lieutenant General, U. S. Army,
 "Commanding.

Colonel Royall. May I say this: the Commission has ruled on it, and I assume it could reconsider it if it desired. However, I desire to make this additional argument about the admissibility of that proclamation.

It plainly appears from that proclamation that nothing is contemplated as to the military administration of the law in that territory; on the contrary, it clearly and almost positively, certainly inferentially, appears that the civil authorities are designated to enforce the various restrictions which are imposed therein.

The President. I do not take it that you ask for reconsideration? You have simply made a statement?

Colonel Royall. I did not want to make formal request for reconsideration.

The Attorney General. I take it, then, that there is nothing for me to argue.

Colonel Royall. I should like to say this--and this is not what the Commission has addressed its remarks to: a moment ago the Commission stated that this was read at the request of the defense. Could we add: "without waiving its objection"?

The Attorney General. I have no objection to that.

Colonel Royall. I think that that is appropriate. I would rather have it clarified.

The President. Yes.

The Attorney General. May I proceed?

The President. Yes.

The Attorney General. I will ask the reporter to mark this document as Prosecution Exhibit 13 and, since it consists of a number of pages, to identify each page by a letter.

(Exhibits P-13-A to P-13-I were received in evidence.)

The Attorney General. May it please the Commission, I offer the prosecution's exhibits P-13-A to P-13-I, inclusive. It is all one exhibit, there being separate papers and that being the reason why they are lettered in that way.

This is confidential and is so marked by the Third Naval District. Accompanying it is a map of the coast of Long Island, showing the various Coast Guard stations and the directions to the Coast Guard stations which were in effect at that time.

I have shown this to counsel for the defense and now hand it to the Commission. I understand you wish to look at it.

Colonel Royall. We object to that on an additional ground. First, we object as in the other cases, because we do not think it is material or relevant. But we also object here because there is nothing on these papers to indicate that that was the condition at the time these offenses are charged to have been committed.

The date on the map shows March 20. In a hurried reading of it, I see nothing to indicate that that was the condition later.

We have not sought to raise captious objections or objections based merely on form. In the other instance there was a certificate from an officer that the condition was in effect on

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a date, and in such event I would not want to try to be technical in bringing the officer. But there is no such certificate here. There is nothing in those papers to indicate that the condition was in effect, so far as I can see from an inspection of them.

The Attorney General. Mr. President, if the Commission wishes, I can, of course, subsequently call Admiral Waesche or his assistant to prove these documents. I take it, however, that the ordinary rule of law is that where a document or a condition is in effect on a certain date and it is objected to on the ground that it may not have been in effect at the time involved, it is up to counsel making that objection to show that the order was not still in effect. It would be precisely as if an order issued June 1, with no other order issued thereafter, was objected to on the ground that it may have been thereafter not in effect. This is an order that is in effect; and for whatever relevancy they have, I think these papers are relevant, as I said before, and I think that the Commission should receive them. Should the President wish me, however, to call Admiral Waesche or his assistant, who, I think, certified these papers, I shall be very glad to do so tomorrow. It seems unnecessary; but, of course, that is a matter for the Commission to decide.

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Colonel Royall. I do not conceive that that rule is applicable to a hearing of this character, but it seems to me that even if it is, it is immaterial. There is nothing on there to show its effect on March 20th or at any time, showing a date on it and that it is a true copy.

I do not want to bring anybody here unnecessarily, if he will furnish a certificate from the proper officer that this was in effect during the period of the charges. We raise no question if it is attached to this, but we do not think the paper should be received until it is properly vouched or identified in some manner.

The Attorney General. I had assumed the certificate was as to the authenticity of the document and not as to its legal effect. It seems to me that if these papers are certified as being certain regulations, with the dates on them, we should hardly go back to the Navy to have them state to us that they were also in effect. However, that is a matter for the discretion of the Commission.

Colonel Royall. Is there a certificate that that map is based on any order or is there any order attached to it at all? I did not see any.

The President. As I understand, it is marked, "Issued 20th of March, 1942." Is there anything in here referring to this map?

The Attorney General. May I see it? I think there is, General McCoy.

The President. I think you had both better look at it before you present it to the Commission.

Colonel Royall. I did not see any.

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The Attorney General. Will you reserve your ruling on this until we have had an opportunity to look it over?

The President. Yes.

(Eight charge sheets were marked for identification Prosecution Exhibits 14 through 21, respectively,)

Colonel Munson. Mr. Griffin.

The President. Will you raise your right hand, Mr. Griffin?

You, being present, solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the

courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Mr. Griffin. I do.

Colonel Munson. You swear that the evidence you shall now give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Griffin. I do.

MATTHIAS R. GRIFFIN,

a witness for the prosecution, testified as follows:

DIRECT EXAMINATION

Questions by Colonel Munson:

Q What is your name, residence or office address, and occupation?

The President. Before the witness is questioned, I would like to call his attention to the fact that this Commission is authorized to punish as contempt of court any breach of your oath, just to be sure you are conscious of it.

A My name is Matthias R. Griffin. I live at 130 Ryder Avenue, Malburn, Long Island.

Q Your occupation?

A I am a special agent of the Federal Bureau of Investigation--that is, the New York Office.

Questions by the Attorney General:

Q Mr. Griffin, I hand you Prosecution's Exhibits 14 up to 21, inclusive. Will you look at them and tell me what they are (handing documents to the witness)?

A They are copies of the charges and specifications, a copy of which I served on each one of the defendants in this case and to which I certified on the day they were served.

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Q Your certificate and oath of service appear at the end of each one of these exhibits?

A That is correct.

Q There are eight of them?

A There are eight of them.

The Attorney General. I offer these in evidence.

Colonel Royall. No objection.

The President. If there is no objection, they will be admitted.

(Prosecution's Exhibits Nos. 14 through 21, respectively, were received in evidence.)

The Attorney General. At this time, may it please the Commission, I understand the practice to be that exhibits offered are not spread on the record without authority of the Commission. I request the Commission to have spread on the record as part of the record each exhibit which I have offered and which you have already admitted.

The President. If there is no objection, that will be done.

(Exhibits Nos. 14 to 21 are as follows:)

(PROSECUTION EXHIBIT NO. 14)

WAR DEPARTMENT

Washington, D. C.

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CHARGE SHEET

Charges and Specifications in Cases of Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel.

Charge I: Violation of the Law of War

Specification 1. In that, during the month of June 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, secretly and covertly passed, in civilian dress, contrary to the law of war, through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went behind such lines and defenses in civilian dress within zones of military operations and elsewhere, for the purpose of committing acts of sabotage, espionage and other hostile acts, and, in particular, to destroy certain war industries, war utilities and war materials within the United States.

Specification 2. In that, during the month of June 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, appeared, contrary to the

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law of war, behind the military and naval defenses and lines of the United States, within zones of military operations and elsewhere, for the purpose of committing or attempting to commit sabotage, espionage, and other hostile acts, without being in the uniform of the armed forces of the German Reich, and planned and attempted to destroy and sabotage war industries, war utilities and war materials within the United States, and assembled together within the United States explosives, money and other supplies in order to accomplish said purposes.

Charge II: Violation of the 81st Article of War

Specification: In that, during the month of June, 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, and without being in the uniform of the armed forces of that nation, relieved or attempted to relieve enemies of the United States with arms, ammunition, supplies, money and other things, and knowingly harbored, protected and held correspondence with and gave intelligence to enemies of the United States by entering the territorial limits of the United States, in the company of other enemies of the United States, with explosives, money and other supplies with which they relieved each other and relieved the German Reich, for the purpose of destroying and sabotaging war industries, transportation facilities or war materials of the United States, and by harboring, communicating with, and giving

intelligence to each other and to other enemies of the United States in the course of such activities.

Charge III: Violation of the 82nd Article of War

Specification: In that, during the month of June 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, were, in time of war, found lurking or acting as spies in or about the fortifications, posts and encampments of the armies of the United States and elsewhere, and secretly and covertly passed through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went about through and behind said lines and defenses and about the fortifications, posts and encampments of the armies of the United States, in zones of military operations and elsewhere, disguised in civilian clothes and under false names, for the purpose of committing sabotage and other hostile acts against the United States, and for the purpose of communicating intelligence relating to such sabotage and other hostile acts to each other, to the German Reich, and to other enemies of the United States, during the course of such activities and thereafter.

Charge IV: Conspiracy to Commit All of the Above Acts

Specification: In that, during the year 1942, the prisoners, Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, being enemies of the United

States and acting for and on behalf of the German Reich, a belligerent enemy nation, did plot, plan, and conspire with each other, with the German Reich, and with other enemies of the United States, to commit each and every one of the above-enumerated charges and specifications.

F. GRANVILLE MUNSON (Sgd.)
Colonel, U. S. Army

* * * * *

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared Colonel F. Granville Munson, U. S. Army, this 3rd day of July, 1942, and made oath that he is a person subject to military law, and that he personally signed the foregoing charges and specifications, and that he has investigated the matters set forth in said specifications, and that the same are true, to the best of his knowledge and belief.

MYRON C. CRAMER (Sgd.)
Major General, U. S. Army,
The Judge Advocate General.

* * * * *

Personal service of a true copy of the above charges and specifications was made by me, the undersigned, on the above-named Richard Quirin on this 3rd day of July, 1942.

M. R. GRIFFIN (Sgd.)
Special Agent F.B.I., N.Y.C.

Subscribed and sworn to before me at New York, New York this third day of July, 1942.

(SEAL)

ROSE K. BOCH (Sgd.)
Notary Public

NOTARY PUBLIC, Queens County
Queens Co. No. 204
New York Co. No. 306
Commission expires March 30, 1944

7-3-42

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(PROSECUTION EXHIBIT NO. 15)

(Prosecution Exhibit No. 15 is identical to No. 14 copied into the record above except that it was served on George John Dasch.)

(PROSECUTION EXHIBIT NO. 16)

(Prosecution Exhibit No. 16 is identical to No. 14 copied into the record above except that it was served on Herman Otto Neubauer.)

(PROSECUTION EXHIBIT NO. 17)

(Prosecution Exhibit No. 17 is identical to No. 14 copied into the record above except that it was served on Heinrich Harm Heinck.)

(PROSECUTION EXHIBIT NO. 18)

(Prosecution Exhibit No. 18 is identical to No. 14 copied into the record above except that it was served on Edward John Kerling.)

(PROSECUTION EXHIBIT NO. 19)

(Prosecution Exhibit No. 19 is identical to No. 14 copied into the record above except that it was served on Ernest Peter Burger.)

(PROSECUTION EXHIBIT NO. 20)

(Prosecution Exhibit No. 20 is identical to No. 14 copied into the record above except that it was served on Herbert Hans Haupt.)

(PROSECUTION EXHIBIT NO. 21)

(Prosecution Exhibit No. 21 is identical to No. 14 copied into the record above except that it was served on Werner Thiel.)

The President. Colonel Munson, I will ask you hereafter to swear the witnesses as to both oaths, if you please.

Colonel Munson. Mr. Cullen. Hold up your right hand. This is not the oath as the witness, but this is an oath of secrecy that you will now take.

You solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Mr. Cullen. I do.

Colonel Munson. You understand that is an oath of secrecy, for which you can be punished if it is broken.

2 Now, I give you the oath as a witness. Do you swear that the evidence you shall give in the case now on hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Cullen. Yes, I do.

JOHN C. CULLEN,

a witness for the prosecution, testified as follows:

Questions by Colonel Munson:

Q What is your name, rank, organization, and station?

A John C. Cullen, United States Coast Guard. My rating is cockswain.

Q Where are you stationed?

A I am stationed at Amagansett, Long Island.

The Attorney General. I ask the stenographer to mark as Exhibit 22 what I am now presenting, with this cap in this container.

(Container containing cap was
marked Prosecution's Exhibit
22.)

DIRECT EXAMINATION

Questions by the Attorney General:

Q Mr. Cullen, you are in the Coast Guard?

A Yes, sir.

Q Where were you stationed on June 13, 1942?

A Amagansett life boat station.

Q Do you remember what occurred that night?

A Yes, sir.

Q When did you go on duty?

A Ten after 12.

Q At what time of the day? Was it ten after 12 a.m.
or p.m.?

A A. M., sir.

Q What kind of night was it?

A Foggy night.

Q Well, describe that a little more, please.

A Well, it was very dark and very foggy.

Q How far could you see?

A Not more than 15 feet; 20 feet at the most.

Q When the events that you are going to testify to
occurred, how far were you from the Coast Guard station at
Amagansett?

A About not quite a half a mile, sir.

Q Not quite a half a mile. What was the first thing
that you saw that night after you went on duty at 12:10 a.m.?

A I saw a dark object out in the water. It was about
20 feet away.

Q I think you had better address your remarks to the
Commission, so they can hear them, and keep your voice up. What
kind of object? Will you describe the object?

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A It was just a dark object when I first approached it. Then I walked up a little further and I flashed my light upon it; quickly put it out again. It did no good. Then I approached a little closer yet, and I noticed there were three men standing there.

Q Standing where?

A Out in the water, sir.

Q How deep in the water?

A Oh, about a little over ankle deep; not quite at their knees.

Q And how far was that from the Coast Guard station?

A That was not quite a half a mile, sir.

Q What occurred then?

A I asked these men who they were. I hollered out. One of the men walked toward me--

Q Do you recognize the man in court who walked towards you?

A I think so, sir.

Q Will you stand up and identify him, if you see him in court? Stand up, please. Now, do you see the man?

A Yes, sir.

Q Which is he?

A Right here (indicating), sir.

Q Go and point to the man that you have in mind. It won't hurt you. Just go and point at him. Point at him. Which is he?

A Yes, sir; right here (indicating).

Q Will you stand up, please?

(One of the accused stood and approached the witness.)

Q Is that the man that you remember seeing?

A Would he mind saying a few words?

Q Do you want to identify him by his voice? Is that what you mean?

A Yes, sir.

The Attorney General. Do I have the Commission's permission to permit the person whom the witness has identified to speak, so that he may be able to identify him by his voice?

The President. If there is no objection on the part of the defense.

Colonel Royall. I do not represent him, sir.

Colonel Ristine. No objection.

One of the accused. What is your name?

The Witness. Yes, sir.

Questions by the Attorney General:

Q What do you mean by "Yes, sir"?

A That's the man.

Q That's the man that you saw at that time?

A Yes.

The Attorney General. The record, I think, should show that the witness identified the defendant Dasch as the man whom he saw on the beach at that point.

Do you object to that?

Colonel Ristine. No.

The Attorney General. May the record so show that?

Questions by the Attorney General:

Q Tell us what happened then.

A I asked him who he was, and he approached me and he

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said, "Coast Guard?"

I said, "Yes, sir." I asked him who he was.

He said, "We are a couple of fishermen from Southampton and ran ashore here."

I asked him what was the trouble, and that's what he told me. Then I asked him what he intended to do about it.

He said, "We will stay here until sunrise and then we will be all right."

So I told him it was four hours until then; there was no reason why he should not come up to the station and stay there.

Q At that time were the three of them standing together when you were talking to them?

A No, sir; just one.

Q And the other two were near?

A They were out in the water yet, sir.

Q Could you see the other two from where you were?

A No; I didn't pay much attention to them.

Q So this conversation was with you and Dasch, without the other two being present?

A Yes, sir.

Q Continue.

A He hesitated a moment and he said, "All right."

We walked about 5 feet, and he stopped and said, "I am not going with you."

I asked him why.

He said he did not have any papers of identification or permit to fish.

Q He said that?

A Yes, sir. I told him he had to come along, and I

insisted upon it, and he said no.

Then I went to grab his arm, sir, and he said, "Now, wait a minute. You don't know what this is all about."

I told him no.

He asked me how old I was. I told him.

He asked me if I had a father. I said yes. And a mother. I said yes.

He said, "Well, I wouldn't want to have to kill you."

In the meantime a man came down from the sand dunes in back of me whom I did not see until he was right alongside of me.

Q Was the man who came down from the sand hills one of the two men who were standing in the water? Or was he a fourth man?

A He was a fourth man.

Q Would you recognize him now?

A No, sir, I don't think I would.

Q You think you would?

A I don't think I would.

Q Very well. Continue on.

A He wore a bathing suit and was dragging a canvas bag. He mentioned a few words not in English.

Q What kind of bag was he dragging? You said canvas. What kind of canvas bag?

A More like a sea bag.

Q A sea bag?

A Yes. It was dark. It wasn't light like ours.

Q By "a sea bag" do you mean a duffle bag?

A Yes, sir; one with large eye-holes in it.

Q Very good.

A This man I was talking to before grasped his mouth and told him to shut up and get over with the other men, which he immediately did, and he took my arm and he said, "Come over here."

Q Who took your arm?

A The first gentleman I met.

Q You mean Dasch?

A Yes.

Q You can now use Dasch's name, having identified him. Dasch took you along?

A Yes. We went about 5 feet further, and he said, "Forget about this and I will give you some money and you can have a good time."

I told him I did not want any money. He offered me about a hundred dollars. I told him I did not want it. He offered me about three hundred dollars. He said, "Take this." So I took it.

He told me to count it, and I said, "No. It's all right." I tried to count it. It was too dark.

I put it in my pocket, and he said, "Wait a minute." He took off his hat and he said, "Take a good look at me." I took a good look at him.

He said, "Look in my eyes." He said that three or four times.

Then he put his hat back on and he said, "I'll be meeting you in East Hampton sometime. Do you know me?"

I said, "No, sir. I never saw you before in my life."

He mentioned his name was J. W. Davis. He asked me what mine was. I told him Frank Collins.

Q That was not your name?

A No, sir.

Q Continue.

A I backed up, and he turned around and went back to the other men. As soon as he was out of sight I immediately ran to the station.

Q When you say he went back to the two men, do you mean he walked to join the men in the water or the man behind the sand dunes?

A He walked to join the men in the water.

Q What happened to the man in the sand dunes?

A He came down--I mean he went to the other men that were in the water.

Q So that both Dasch and the man behind the sand dunes walked to the two men who were in the water?

A Yes, sir.

Q Had you up until that time or did you thereafter mention what the two men in the water were doing?

A No, sir. I couldn't see them from where I was standing.

Q Did you notice any other person or object in the water at any time?

A No, sir.

Q Did you hear any noise coming from the water at that time or later?

A Later, yes, sir.

Q How much later?

A Not until after we had come back from the station.

Q Well, then, proceed. I will come to that when you come to that. Proceed with what you did immediately after

what you testified to.

A I went back to the station. I told the officer in charge. Immediately we got arms and went out--

Q Who was the officer in charge?

A Jenett, Second Class Boatswain's Mate. He gave us guns and ammunition, and we went back to the spot where I first saw them. There was nobody there.

Three of us waited there for a while, while the officer in charge went with another man to the station. We stayed there for quite some time before we heard these powerful motors. We thought they were coming back in.

Q How long was the time which had elapsed between the time that you had left Dasch and the others, walked to the Coast Guard, and returned? How long did that round trip take?

A About fifteen or twenty minutes.

Q Fifteen or twenty minutes?

A Yes, sir.

Q Very good. Continue.

A We waited there. After we heard the motors we stayed there for quite some time.

Q Could you see anything in the sea?

A Just a long dark object.

Q A long dark object. Can you describe it a little better? You say a long object. How long would you estimate it to be?

A 85 foot, sir, or more.

Q Can you describe it a little better than that?

A No, sir. It was too foggy to make out at the time.

Q Was it moving?

A Yes, sir.

Q Could you locate where the sound was coming from?

A Coming from directly out at sea.

Q In connection with the object that you mentioned?

Was the sound connected with the object?

A Yes.

Q Was it coming from the object?

A Yes, sir.

Q Did you smell anything when you were there?

A Yes, sir.

Q What did you smell?

A A distinct odor of oil.

Q With respect to the object, where was the odor of oil?

A Coming from the southwest.

Q Could you see anything on this object?

A No, sir.

Q Was it low water or high water at that time?

A It was low tide, sir.

Q From the low tide where you were standing, could you see any other things on that object?

A No, sir.

Q Very good. Continue.

A We walked further up the beach for a while and came back again, and we just laid around there waiting. Then a seaman came down and told me to report to the Tower, there was a phone call for me.

I went back there and there was a warrant officer in charge of the station wanted to know what the story was all about. I told him over the phone.

Q Who was the warrant officer?

A Mr. Odin.

Q How do you spell it?

A O-d-i-n, I believe.

After I told him the story I stayed next to the Tower for quite some time--at the bottom of it.

An army lieutenant came by. He was looking for some of his troops. So I walked down the beach in the direction where I was before with him, till I met this officer in charge at that time, Jenett, and then we proceeded back of the sand dunes toward a light we had seen there.

Q What did the light look like that you had seen in the sand dunes? Can you describe it?

A It was a small light. It looked like the light of a car.

Q On a car?

A Yes, sir; because it was moving quite fast.

Q Was it as large as the light of a car?

A No, sir; small.

Q You mean the size of a flashlight?

A Yes, sir.

Colonel Royall. Object. It is leading.

The Attorney General. I am sorry. I have been leading a little bit. I will try not to. It is sometimes a little quicker.

Questions by the Attorney General:

Q What did you do after that? You went up the sand dunes and looked around. What did you find? Anything?

A Not a thing, sir.

Q What time of the morning was this?

A It must have been about an hour and a half.

Q An hour and a half after you had first seen these occurrences take place?

A Yes, sir.

Q What happened then?

5 A Well, we started back to the station and back of the sand dunes, not along the beach, and we almost got to the station when we heard these motors begin. We immediately ran down to the beach, but they had just died out. We didn't know what direction they were coming from or anything. Mostly everybody was running around there.

I stayed there a while and I met Mr. Barnes--he's the skipper of the station--and he told me to come back to the station with him.

I went back to the station and there I gave him the money I had received.

Q Did you count it or did Mr. Barnes count it?

A Yes, sir.

Q How much was it?

A Two hundred sixty dollars.

Q Do you remember the denominations that you had?

A Yes.

Q What were they?

A Two 50's, five 20's, and six 10's.

Q Good.

A After I had given him the money, it was practically daylight then.

So he suggested we go back to the spot where I had first

met these men. We went back there and I examined the spot where I first saw them. There I found a package of cigarettes, mostly buried in the sand. I gave those to the skipper, and I stood around there quite some time, talking to the rest of the seamen that were there, while the skipper went on in back of the sand dunes.

Then I left there and went back to the station for quite some time later.

Q To whom did you give those cigarettes?

A Mr. Barnes.

Q All right.

A I went back to the station and stayed around there for quite some time, until two lieutenants came in from the Coast Guard, and they asked me to tell them the story.

I was in the office describing it all to them. Mr. Barnes came in and told us to go in the boat room with him. We went in the boat room, and there was this equipment they had dug up.

Colonel Royall. We object to that. Whether they had dug up equipment or not is hearsay.

The Attorney General. I agree that the statement that that was dug up be stricken from the record, if the Commission wishes it stricken from the record.

The President. Well, I would like to state that I would like a little discussion about this. I have to pass on the admissibility of evidence, and I take it, from the President's proclamation, that there is unusual freedom for both sides in the term "probative value for a reasonable man." So I want to make it perfectly plain that the rulings will be to give

full and free presentation of evidence that would fit into that statement.

I just want to be informed. I did not catch the passage between the two counsel. I would like to have a statement of it.

The Attorney General. The witness stated that he was in the Coast Guard when certain boxes were brought back which had been dug up. The objection was that, since he did not see them dug up, he cannot testify with respect to their being dug up. We shall later show that they were dug up and put the witnesses on. I said I had no objection to its being stricken out.

The President. Well, we will accept the objection, then, of the defense counsel.

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Colonel Royall. I would like to say that it is going to be very difficult for me to fit my objections into a more liberal procedure, because it is difficult to know just where the line is drawn.

The President. I simply stated that as a matter of information; and we will accept and give considerations to any objections you care to make.

Colonel Royall. I do not think you are going to have very many; but when it is a pure matter of hearsay it should be objected to.

The President. I just wanted to bring that out. That is the reason I made the point that I would like to have a perfectly clear understanding and a full and free hearing.

Questions by the Attorney General.

Q You may continue. Your last testimony was with respect to your being in the Coast Guard station. I want you to testify to just what you saw. You were then in the Coast Guard station?

A Yes, sir.

Q What was brought into the Coast Guard station?

A Four boxes.

Q What kind of boxes?

A Wooden boxes.

Q Had they been opened?

A Just one.

Q What had been opened? Did you see the contents of the box that had been opened?

A Yes, sir.

Q What were they, in a general way?

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A Fountain pen and pencil sets.

Q Do you remember anything else?

A And glass capsules or tubes.

Q Anything else?

A Metal disks about the size of a .45 shell.

Q Will you address yourself to the Commission? What was then done with the other boxes, in your presence?

A They were not opened at all in my presence.

Q Did you see anything else? Did you see anything else that was brought in?

A Yes, sir; a canvas bag, which they turned upside down and dumped out the clothes that were in it.

Q Were there any other clothes or any other things brought in?

A There were uniforms, I noticed, and civilian coats. Most of this stuff was very wet and it was hard to distinguish what it was.

Q Going back to your statement that the defendant Dasch took his hat off, I think you said, and asked you to look at him: Did you notice what kind of a hat he had on?

A A Fedora hat.

Q He had an ordinary Fedora hat on?

A Yes, sir.

Q What occurred then? What did you do then, after you were in the Coast Guard station and saw the boxes brought in? What was the next thing that happened?

A I went into the kitchen and had breakfast and went upstairs to bed.

Q You spoke of seeing some uniforms and clothing in the Coast Guard station. Do you remember any particular one,

3w or can you recollect what they were?

A There was an over-sea hat.

Q I show you Prosecution's Exhibit which has been marked "P-22," and ask you if this is the hat which you saw in the Coast Guard station that you are referring to. Will you look at it (handing hat to the witness)?

A Yes, sir; that is the hat.

The Attorney General. I offer it in evidence. And may I ask the Commission whether it is appropriate for me, when I introduce these exhibits, to point out for the benefit of the Commission their significance and their markings?

The President. If there is no objection on the part of the defense,

The Attorney General. Do you have any objection to that?

Colonel Royall. Provided it is purely descriptive.

The Attorney General. I should like the Commission to look at this hat, which is P-22 and which bears the Swastika-- but perhaps I should not testify about it. It bears certain insignia.

The President. If there is no objection, it will be accepted.

(P-22 was received in evidence.)

The Attorney General. You may cross examine.

CROSS EXAMINATION

Questions by Colonel Royall.

Q You were not armed?

A No, sir.

Q There were four or five men there that you saw, were there?

A Four men, sir.

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Q You did not see anyone else besides those four?

A No, sir.

Q There was no other member of the Coast Guard in your vicinity?

A There was a tower.

Q How far away?

A A hundred and fifty yards.

Q Was that visible?

A Not in the fog, sir.

Q No one was in your vicinity, no member of the Coast Guard?

A No, sir.

Q No violence was shown to you?

A No, sir.

Q And no violence was offered to be done to you; no one attempted to injure you in any way?

A No, sir.

Colonel Royall. That is all.

Questions by Colonel Dowell.

Q You spoke of seeing a dark object in the water as the first thing you saw?

A Yes, sir.

Q Did you determine what that object was? If so, what was it?

A Not at that minute.

Q Did you determine later what it was?

A Yes, sir.

Q What was it?

A Excuse me, sir. Do you mean the object I saw after-

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wards out there?

Q The dark object you saw at first.

A When I first approached this man?

Q The first thing you saw. You stated there was a dark object out in the water.

A Yes, sir.

Q What was that object?

A That was this man here (indicating).

Q Nothing else?

A No, sir.

Colonel Dowell. That is all.

The President. Are you through with the cross examination?

Colonel Dowell. I think Colonel Ristine had something he wanted to ask at this time.

Colonel Ristine. If I may. I thought probably the procedure would be to permit counsel for the seven men to cross-examine on these questions.

The President. You may cross-examine if you wish.

CROSS EXAMINATION ON BEHALF OF THE DEFENDANT
DASCH

Questions by Colonel Ristine

Q I wish you would tell us just what you recall, now, about the incident wherein you say Dasch came up there and took his cap off and asked you to look at him. Will you tell us in your own way about that incident?

A After he spoke to me there he took off his hat and said, "Take a good look at me." And he said, "Look in my eyes." He said that three or four times. He said, "Would you ever

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recognize me again if you saw me?" I said, "No, sir; I never saw you before in my life." And that is all.

Q Did he suggest that you might see him later on somewhere?

A Yes, sir. He said, "You may see me again in East Hampton sometime."

Q Was any other place mentioned?

A No, sir; it was just East Hampton.

Q Was a flashlight used so that you could get a good view of him there?

A No, sir.

Q It was at his request that you took a good look at him?

A Yes, sir.

Q And that good look, I take it, aided you in identifying him here, did it not?

A Yes, sir.

Q The other boy that came up, or the other man who came up, came up very close to you before you realized he was approaching?

A Yes, sir.

Q How close did he come to you?

A Within two or three feet, I would say.

Q Did you look at him?

A Yes, sir.

Q But you think you could not pick him out in the court room here?

A No, sir.

Q By the request of Dasch to you to look at him

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you were able to identify him, or at least that assisted you in identifying him?

A Yes, sir.

Colonel Ristine. I think that is all.

REDIRECT EXAMINATION

Questions by the Attorney General.

Q You stated that you saw two objects. First, you spoke of one object, and then of another object. When you first said you saw an object on the beach you meant that you saw an object which later turned out to be two men?

A Yes, sir.

Q When the other man came over to Dasch and when Dasch stopped him from talking, what language did they use in conversing, if you know?

A The man that approached me from the rear spoke in a foreign language, and Dasch didn't use a foreign language.

Q Do you know what the foreign language was in which he spoke?

A No, sir.

Q You said you had not been threatened with violence. I think that was your answer to the question of counsel for the defendants?

A That is right.

Q You also said, I think, that Dasch had made certain suggestions to you as to what might happen to you if you did not go away. What were those suggestions that he made to you?

A He said he would not want to have to kill me.

Q But that you did not take it was violence?

A No, sir.

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The Attorney General. That is all.

The President. Are there any further questions by the defense?

Colonel Royall. No, sir.

The President. Are there any questions from the members of the Commission? (No response) There seem to be none.

Colonel Munson (addressing the witness). Keep in mind your oath as to secrecy.

(The witness left the stand.)

WARREN BARNES, CHIEF BOATSWAIN'S MATE, U. S. COAST GUARD, a witness for the prosecution, was called and took the stand.

Colonel Munson. Two oaths will be administered to you. The first oath is one of secrecy, and the other is the oath as a witness. Hold up your right hand.

You solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the court room until released from your obligation by proper authority or required so to do by such proper authority?

The Witness. I do.

Colonel Munson. It is understood, of course, that violation of that oath would be subject to severe punishment?

The Witness. Yes, sir.

Colonel Munson. Now, the oath as a witness.

You solemnly swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness. I do.

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DIRECT EXAMINATION

Question by Colonel Munson

Q Speak loudly, so that the members of the Commission can hear you, and also those on the other side. State your name, rank, organization, and station.

A Warren Barnes, Chief Boatswain's Mate, U. S. Coast Guard, in charge of Amagansett Light House Station.

Questions by the Attorney General

Q Do you remember an event that occurred after midnight on June 15, 1942, when you were first told of the incident that the Coast Guardsman has just testified to?

A At 1:05 a. m. I received a telephone call.

Q Where were you?

A At my home.

Q What did you do as the result of that call?

A I took my hat and told my commanding officer, who was spending the evening, himself and wife, that I was told to report back to the station immediately.

Q You went to the station, did you?

A He said, "Just wait a minute, and I will find out what it is about." He called the station, and they told him about what had happened and requested that I be notified immediately. He got a gun and gave it to me, and I left immediately and reported to my station at approximately 1:12.

Q Who was at the station?

A Montgomery, Dowling--

Q Was Cullen there?

A No, sir.

Q When did he come in?

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A I met him over on the beach there.

Q When did you get to the beach?

A I left approximately 1:15.

Q He was on the beach?

A Yes, sir.

Q As a result of what you said to him did he take you to any particular place on the beach?

A I didn't see him for some few minutes after that. A message was left with me to meet Jenett, boatswain's mate, over on the beach, and when I got there, for some reason or another he was not there; he was farther along the beach investigating something. So I waited a few moments and asked the boys what they had seen in the vicinity, and they told me about a light in the cottage, and I thought I would go up the beach to find Jenett, which I did. At that time I stood there talking a minute or two, and they were getting something to eat, and Dowling stood there, and a very noticeable odor of fuel oil was in the air.

Q Coming from which direction?

A In the South.

Q Was it still foggy?

A Yes sir. The visibility was cut down so that you could not see over three or four hundred feet.

Q Did you see anyone?

A As I was standing there I saw the outlines of this boat there. It was about 150 feet back of the false pier, or a couple of hundred feet from where we were standing.

Q From what you saw could you tell what kind of a boat it was?

A I could not make it out very distinctly, other than

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it was a boat.

Q How far was the water washing?

A I would say, about 3 feet. The stern was cut off very short, and I could see some structure that appeared to me--I couldn't make it out distinctly on account of the fog.

Q Did you have any glasses?

A No, sir. It appeared to me to be like the pilot house on one of these old rum boats they used to have in the bootlegging days.

Q Did you hear any noises coming from that direction?

A I heard the motor stop. It chugged along, and all at once I thought she was ashore, and it was then they threw the motors full speed ahead, or raced the motors. So I told Jenett to wait, that I was going back to the station to notify Mr. Odin, and it was understood that as soon as they got anything definite they would give the information to me.

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So I started back over to the station, and on the way up the beach, this boat proceeded along the beach--parallel to the beach--and she went, practically, faster than I did, and when I got up to the station, she was right up at the end of the road.

So I went up to the station and called Mr. Odin and told him what I had found up to that point. Then I called the Navy Department and told them they had better watch out there and get their men out.

Then I called the man in the tower and asked him what had become of the boat, and he said the boat had proceeded east.

So I asked him--I said, "What way are you facing? Are you facing the ocean?"

He said, "Yes."

I said, "Which hand is it on?"

He said, "On my left hand. She is going east."

So I returned back to the beach, and in the meantime Chief Boatswain Chilar spoke up, and he had Seaman Brooks with him.

So we went back to the beach, and we sat around talking, and we spread the men out, because the men began to come in then. So we began to spread out and make plans to watch the beach closer, to catch anybody that would land or anybody that would come up on the hill, so we could locate him.

In the meantime, and about that time, Cullen had come up.

Q Before you proceed further, could you see any objects or figures on this boat that was moving east?

A No, sir, we could not.

Q Proceed with your story. You said Cullen had come up.

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A Cullen had come up, and he told me--he offered to give me this money. I told him to take it--to hold onto it a little later till we got into the station.

He told me what he had observed. It was dark. We had no light, anyway, and we was trying to pick up these marks.

Q What do you mean when you say "these marks"?

A He said these men that he had met were dragging this bag, and that is what we were trying to see if we could locate.

Q Did you locate the marks?

A No, sir, not for quite a bit.

Q What did you locate?

A Then, as I say, the men from the Army and the Coast Guard had given orders out to proceed up the beach. They came in up the beach, and, of course, as they came in that stretch up the beach, we could stand up there and watch.

In the meantime, there were two dories about a mile up the beach, called Yamico Bathing Beach. I sent two men up there to watch them dories, to see that nobody would attempt to take them; and then I sent a man east to the Army post to notify them that help was needed, which he did. They sent word back.

In the meantime--this was about quarter past four--we again heard this boat or heard a boat start her motors up, and they ran for about three minutes, and it appeared to me she went in a southerly direction, till I heard the motors no more.

Q Could you tell from the noise whether it was the same boat you heard before?

A That I couldn't say. It sounded--I just heard it for a short interval, and she proceeded south, and all at once, why, the sound was drowned out; I didn't hear any more of it.

So I asked the boy that had come back from patrol if he

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had seen Fullington, whom I had sent to the Army post, and he said yes; he had seen this boat going east, and they could see outlines of it going east--proceeding--and as the men came from the other stations or along the beach, they also stated they had seen her going east.

Then I went back and reported to the station again, and Cullen gave me the money, and I gave him a receipt for it. There were two \$50 bills, five twenties, and six tens.

Then I came back to the beach, and, of course, it began to get daylight.

Q That was American money?

A American money.

As it got daylight, we spread out around the beach and tried but we couldn't seem to pick up any marks on the beach. Finally Seaman Brooks hollered to Chilar, and he came up saying, "I think I have located something."

We went up there, and we could see where something had been dragged. You could only see here and there. It looked like a bag and rope hidden by the sand.

Q That ended at a certain spot?

A As we walked along, on each side of this bag, or whatever it was that appeared to be dragging--when I walked along ahead of them, probably I was twenty feet ahead, I looked over in this hill, and I saw a place that had been just freshly dug out.

Q What did you do?

A I called to the men to come over, and they came over, and Chilar sounded out, and we struck these cases. There were four cases.

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Q Then you dug?

A Yes, we dug with our hands and dug them out.

Q How deep were they buried?

A I would say about six inches.

Q What were they that you found under the six inches of sand?

A There were four cases, two at the bottom and two on top.

Q Cases made of what? Were they wrapped in paper?

A Wrapped in paper and tarpaulin.

Q I show you Exhibit P-23. Is that one of the boxes?

A That is one of them.

(Box was marked as Exhibit P-23 for identification.)

Q What did you do with those four wooden boxes?

A I told them--I ordered Seaman Brooks to go back and get the truck, and I asked Chilar to come with me and walk around with me to see if we could find anything else or any signs of marks.

We walked in a northeasterly direction, probably 150 feet, and there was another place you could readily see had been dug, and there I found a bag of clothing.

Q What bag of clothing?

A Well, these here.

Q I show you Prosecution Exhibit 24, which I will identify as a duffel bag, and ask you if that is the bag you found buried under the sand.

A That is the bag, yes, sir.

(Bag was marked as Exhibit P-24, for identification.)

o5

Q Did you find anything else there at that spot or at the first spot where you dug?

A At this spot, just a few feet away from that, I called Chilar. He came over, and there was some clothing. There was a cravenette coat.

Q A coat?

A A coat, yes, sir.

Q Was that buried?

A No, sir, that was on top.

Q I show you a coat marked for identification as P-25 and ask you whether that was the coat.

A Yes, sir, that was the coat.

(Coat was marked as Exhibit P-25,
for identification.)

Q Did you find anything else?

A And there was some bathing trunks there.

Q I show you Exhibit marked P-26 for identification, a pair of bathing trunks, and ask you if they were the bathing trunks.

A Yes, sir, with a light belt, yes, sir.

(Bathing trunks marked as Exhibit
P-26, for identification.)

Q Did you find anything else?

A There was one shoe--white shoe--sneaker.

Q I show you Exhibit P-27. Is this the canvas sneaker you refer to?

A Yes.

(Canvas shoe was marked as Exhibit
P-27, for identification.)

Q Was this buried or lying on the sand?

A No, that was lying on the sand.

o6

Q Did you find anything else on the sand?

A No, sir. In the hole where the duffel bag was buried there were two trench shovels.

Q Were they in the duffel bag?

A No, sir.

Q But they were in the same hole?

A They were in the same hole.

Q I show you Exhibits P-28 and P-29, they being two shovels, and ask you if you can identify them.

A Yes, sir, those are the shovels.

(Two shovels were marked as Exhibits P-28 and P-29, for identification.)

Q Did you find anything else in the hole?

A The bag; that was all.

Q The duffel bag that has already been marked?

A Yes, sir.

Q Did you find anything else on the beach?

A No, sir--there were some cigarettes, yes, sir.

Q What did you do, by the way, with the cigarettes?

A They were taken in. I turned them over to our Intelligence--Coast Guard Intelligence.

Q Who was that?

A Lieutenant Erschel.

Q I show you Exhibit P-30, which consists of cigarettes in a broken package and ask you whether they are the cigarettes that you turned over to Lieutenant Erschel.

A Yes, sir, they were turned over.

(Package containing cigarettes was marked as Exhibit P-30, for identification.)

o7

Q You have described and identified a number of objects which you found there, buried under or lying on the surface of the sand. What did you do with those objects?

A As soon as the truck came back, we loaded them onto the truck and came back to the station.

Q You brought them back to the station?

A The Coast Guard station, yes, sir.

Q What did you do with the boxes when you got them back to the station?

A We opened one box.

Q You opened one box at the scene?

A When we took it out.

Q Was the box that you opened the box you have already identified?

A Yes, sir, a box of that type and character. When we took the lid off, it had the hermetically sealed tin inside.

(Tin container was marked as
Exhibit P-31, for identification.)

By the Attorney General:

Q Is this the tin you referred to as having been taken out of the wooden box?

A Yes, sir--we didn't take it out of the box.

Q When you opened the box, you found the tin in it?

A We found the tin in the box.

Q Did you take any of the contents of the tin out at that time?

A No, sir, we didn't remove from the package at all.

Q I understand you found back there an unopened box and took the box--

A (Interposing) With the lid on.

o8

Q (Continuing) --back to the Coast Guard station?

A Yes.

Q What did you do then?

A I went into the station and had Mr. Odin call and report to the station immediately, and they informed me that Lieutenant Erschel was there, and I went into the office, and they were taking testimony from Cullin, and so I asked him to come out.

I said, "We have something here we want you to look at right away."

So, then he came into the boat room, and I ordered the truck drove in, and we placed a guard to keep the other men out of that section, and we unloaded the boxes and the bag, and they were brought into the station and we put them on the floor.

Q Proceed.

A Then they opened up this tin.

Q You opened up the tin?

A That is, the officers opened it up.

Q And took the contents out?

A Yes, sir.

Q What were the contents? You need not describe them minutely, because we shall do that by another witness. Just state what it contained, in a general way.

A Well, it had pencils in there--I mean fountain pens and pencils. They opened up one package there that had what they called pencils or little glass containers and some kind of powder.

Q Will you address yourself to the Commission? It will be easier, then, for them to hear.

o9

A Yes, sir.

Q What else did you find?

A That is about all I saw.

Q Did you open the duffel bag at that time?

A No, sir. I was real busy, because there was phoning all the time, and I had to go back and answer the telephone.

Q Was the duffel bag emptied in your presence?

A It was dumped on the floor.

Q When you came back, the contents had been dumped on the floor?

A Yes.

Q Did you look at the contents of the duffel bag?

A I saw parts of it, yes, sir.

(A coat was marked as Exhibit P-32, for identification.)

By the Attorney General:

Q I show you Exhibit P-32, already marked for identification, a coat, and ask you whether you recognize this as what you saw.

A It is the same material as the coat I saw, and it had a button on it with an anchor.

Q I show you this coat and ask you to examine it carefully and state whether that is the coat.

A Yes, sir, that is the type of coat.

Q It is the coat or the type of coat?

A It is similar. It was wet; in fact, all those materials were wet.

Q Do you remember how many coats there were that had been dumped on the floor?

o10

A No, sir, I don't.

Q Do you remember what other articles of clothing had been taken out of the duffel bag when you saw them?

A There were shoes.

(A pair of shoes was marked as Exhibit P-33, for identification.)

By the Attorney General:

Q I show you a pair of shoes, marked as Exhibit P-33 for identification, and ask you whether those are the shoes or the type of shoes that you saw that had been taken out of the duffel bag.

A Yes, sir.

Q Do you remember how many pairs of shoes, how many coats, and so on, there were? Were there more than one?

A That is the one I distinctly remember.

Q Do you remember how many coats there were?

A No, sir.

Q Were other coats with that?

A There was a bunch of coats there very similar; but as far as the number, I couldn't say.

Q A bunch of what?

A Material of that kind was there, but I didn't examine them myself.

Q I understand you have testified to seeing a coat and a pair of shoes?

A Yes.

Q Did you see any other clothes there?

A Yes.

Q What?

A Clothes like there was there.

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Q What clothes?

A For similar clothes.

Q What was it for?

A Uniform cloth.

(A pair of pants was marked as
Exhibit P-34 for identification.)

By the Attorney General:

Q I show you Exhibit P-34, admitted by the defense
to be a pair of pants, and ask you to identify that.

A That was what we saw in the bag, yes, sir. That
type of clothing, yes, sir.

Q Do you remember how many there were?

A No, sir, I don't.

Q What did you do after that?

A Then everything was--Lieutenant Nirschei--

Q (Interposing) They were turned over to Lieutenant
Nirschei?

A Yes, sir.

Q He was in the Coast Guard Intelligence?

A Yes, sir.

Q He took control of them from you?

A Yes, sir.

Q I show you the prosecution's Exhibit 22, consisting
of a cap. Do you remember seeing this?

A Yes, sir.

Q Where did you see it? In the Coast Guard?

A Yes, sir.

Q That was brought in with the other material?

A Brought in and taken out.

o12

Colonel Royall. What are all these little tags with writing on them?

The Attorney General. They are just the F.B.I. markings.

May I explain to the Commission that these tags are simply for the identification of the articles by the F.B.I. under their regulations. They just show how the F.B.I. got them and are not part of the evidence in any sense. On one of them is placed the number of the exhibit.

Colonel Royall. I did not know whether it contained any narrative evidence that should not be produced here.

The Attorney General. No; the only thing in evidence is the object itself and not any of the writing.

By the Attorney General:

Q Mr. Barnes, what were your orders with respect to your patrol duty along that coast?

Colonel Royall. Objection. What his orders were, we think, is not material.

The Attorney General. May I change the form of the question?

By the Attorney General:

Q Under the orders that were given you, what duties did you perform along the portion of the coast that you guarded?

Colonel Royall. Objection. We do not think that is material. What duties he performed? I do not see how that could possibly throw any light on these charges. He has told what he did. He has identified these objects without any objection on our part.

The Attorney General. This, of course, does not go to

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the proof of the acts that took place; this goes to the proof of the kind of military control over that area, and, it seems to me, it is very pertinent to show that.

We have introduced a general map showing the territory covered and the orders given; now we propose to show precisely what those men as members of the Coast Guard did. That will give you the whole military picture at that particular point, which seems to be relevant.

Colonel Royall. May I inquire of the Attorney General, with the approval of the Commission, if this relates to the proclamation which has been put into evidence here but not retained?

The Attorney General. It relates to the proclamation in a sense. I do not think it is the proclamation; it is the document covering the Coast Guard. It relates specifically to the duties of Coast Guard officers at that point.

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Colonel Royall. The evidence relating to the Coast Guard has been withdrawn pending further identification; therefore, I do not think this examination is appropriate at this time.

The Attorney General. I can put in my evidence in any order I wish. Simply because the order has not yet been introduced does not mean that I cannot yet show what the men actually did in that zone--in that Coast Guard zone. Therefore, my question is directed to that.

Colonel Royall. We submit this, sir: that what a particular person did certainly could not change the character of the zone. It would require some sort of order, even if that could have that effect. It would seem to me that what he did might be corroborative to show that the order was being carried out; but until the order is introduced in evidence, there is no basis for this type of examination.

The President. Do I understand from the defense counsel that his objection is based on the fact that what he considered not properly presented before has a bearing on the case?

Colonel Royall. Yes, sir. Our thought is that if the order when introduced is material and is admitted by the Commission, it is conceivable that it would be permissible to show that the order was carried out.

The President. What objection do you see in the order of presentation?

Colonel Royall. There is no objection, sir, if we can assume it will be supplied; but I do not see how we can assume that when it has temporarily been withdrawn and there has been no identification. The paper that they presented did not contain any order at all; it merely contained a map, as far as

the Coast Guard is concerned.

The President. You would admit, then, if that series of orders and maps, which you took exception to, was accepted by the Commission that this was relevant or might be relevant?

Colonel Royall. Sir, I would think then, in frankness to the Commission, that if the Commission permitted the Coast Guard order and the other papers that were offered, having been properly identified, to be admitted, it would seem logical that this could be offered to show that the orders were carried out. However, we do not think the others are competent.

The President. You do not think what?

Colonel Royall. We do not think the Coast Guard orders are competent.

The President. I understand. That is, you question the orders themselves or their authenticity?

Colonel Royal. We objected on two grounds. We do not think they are relevant to show a smaller zone. We also objected on the ground of authenticity. The latter objection, as I understand it, is what induced the Attorney General to withdraw them pending further identification. They are not now before the Commission in any form.

The President. When could you probably present them?

The Attorney General. I think tomorrow, Mr. President, but may I say this: It seems to me that the two matters have no relation. Assume that I had put this witness on before making any reference to those papers and had said to him, after showing that this occurrence took place on the shore that he was going to protect, "What were your orders and what did you do to carry them out?"

3b

How conceivably could that be objectionable? I am showing the nature of his duties and the way in which the coast was actually guarded and the orders to this man as to how to guard it. That has nothing to do with the proclamation, and it seems to me, therefore, that it is relevant to admit it at this time.

Colonel Royall. It is inconceivable to me that what a particular Coast Guardsman did can create a crime, and that is about the effect of the argument of the Attorney General. This witness certainly cannot testify what his orders were; the orders themselves would be the evidence of that. He could not interpret them. If he could give them word for word, he might help us; I doubt whether that would be competent.

But to change what would otherwise be either no crime or a civil crime into a military crime merely by proving what one or a half dozen Coast Guardsmen did or soldiers did would seem to me was much beyond reason; that the evidence would clearly be incompetent. We are dealing here with a serious matter, as to whether there was a crime. Whether one particular Coast Guardsman or a group patrolled the beach, or whatever they intend to show, certainly is not the way to prove that it is a military zone or a defense area, or whatever they are seeking to prove.

The Attorney General. I am not only proving that it is a military zone on paper but I am proving what was being done in that zone, as part of the picture of what went on, in considering the materiality of the entire proof as to the nature and effect of declaring this particular spot a military zone, and it seems to me to be very relevant to show what was done there, just

as if there had been an encampment of soldiers there to protect the coast. We would show that. I think it is relevant.

The President. Is there anything further, Colonel Royall?

Colonel Royall. No, sir, I have stated it as strongly as I can.

The President. All right. Subject to objection by any member of the Commission, your objection is not sustained.

The question may be asked.

It is now 4:39 o'clock. If there is considerably more testimony to be had from this witness, I will have him come again tomorrow; but if you could finish with him in a few minutes--

The Attorney General. There will be the cross-examination, which will probably take some time.

The President. I think, then, that if there is no objection, we will declare the Commission adjourned until ten o'clock tomorrow morning.

The Attorney General. Before adjourning, Mr. President, may I ask you to direct that the exhibits which have been identified--and some of them have been put in evidence--I am now speaking of the physical exhibits--be returned to the F. B. I. for keeping until tomorrow? They have all the exhibits, and I prefer not to leave them in the hands of the reporter.

Colonel Royall. I was going to say that to facilitate matters we do not intend to object to the introduction of any of those. If it would facilitate matters for you to introduce them now, it would be all right.

The President. That will be done if you wish.

(Exhibits P-23 to P-34 were
received in evidence.)

The President. The Commission is adjourned until ten
o'clock tomorrow morning.

(At 4:40 o'clock p.m., an adjournment was taken
until Thursday, July 9, 1942, at 10 o'clock a.m.)

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